INDEX

	Page
Opinions below	1
Jurisdiction	1
Statutory provisions involved	2
Questions presented	2
Statement	2
Argument:	
Introduction and summary	17
I Appellant Candidates Could Not Constitutionally be Disqualified for Failure to Comply with the Five-day Designation Provision of the Alabama Corrupt Practices Act Without Notice and an Opportunity to Correct Technical Defects	21
II Appellant Candidates in Greene County Could Not Constitutionally be Disqualified for an Alleged Failure to Hold a Mass Meeting, in the Absence of Proof that no Such Meeting was Held	27
III Appellant Candidates Could Not be Disqualified under the Garrett Act Because that Statute is Inoperative by Virtue of Section 5 of the Voting Rights Act of 1965	29
Conclusion	33
Appendix A	1a
Appendix B	6a
Appendix C	37a
Appendix D	46a
Appendix E	60a

329-701—69——1

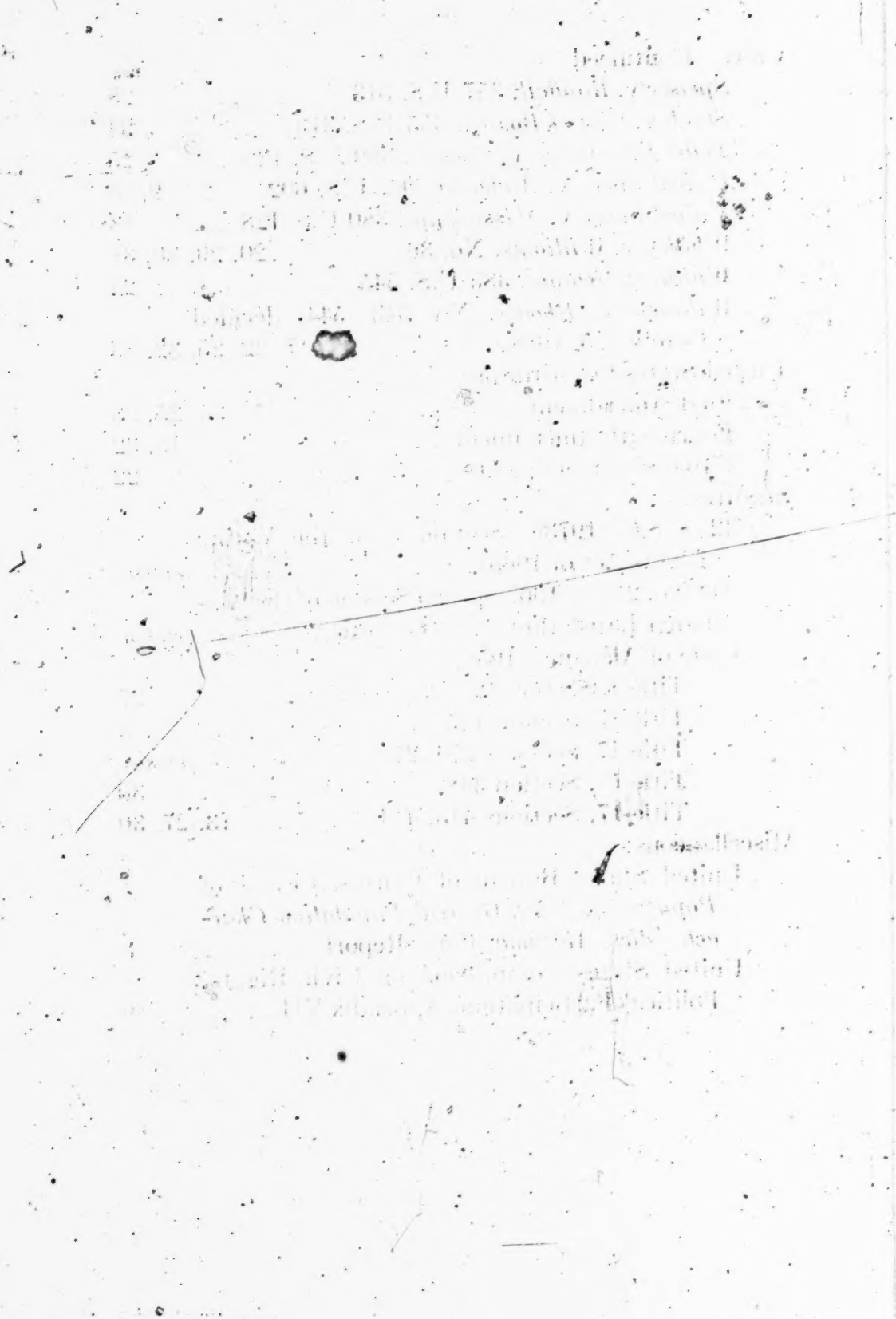
Page
Appendix F 65a
Appendix G 68a
Appendix H 71a
Appendix I 73a
Appendix J 75a
Appendix K 78a

CITATIONS

Cases:

A Quantity of Books v. *Kansas*, 378 U.S. 205 25
Alabama v. *United States*, 371 U.S. 37 ..... 9, 18
Avery v. *Georgia*, 345 U.S. 559 24
Bantam Books Inc. v. *Sullivan*, 372 U.S. 58 25
Bunton v. *Patterson*, No. 26 ..... 20, 29, 31
Carrington v. *Rash*, 380 U.S. 89 27
Fairley v. *Patterson*, No. 25 ..... 20, 29, 31
Freedman v. *Maryland*, 380 U.S. 51 ..... 25, 28
Giles v. *Harris*, 189 U.S. 475 9
Giles v. *Teasely*, 193 U.S. 146 9
Gilmore et al. v. *Greene County Democratic Executive Committee et al.*, Civil Action No. 66-341 (N.D. Ala.) 10
Gilmore v. *Greene County Democratic Executive Committee*, 368 F. 2d 328 (C.A. 5, 1966) 10
Gilmore v. *Lee*, — Ala. —, 210 So. 2d 415 10
Harman v. *Forssenius*, 380 U.S. 528 27
Herndon v. *Lee*, 281 Ala. 61, 199 So. 2d 74 ..... 10, 24
Interstate Circuit, Inc. v. *Dallas*, 390 U.S. 676 25
Lane v. *Wilson*, 307 U.S. 268 25
Louisiana v. *United States*, 380 U.S. 145 ..... 18, 24
N.A.A.C.P. v. *Alabama*, 357 U.S. 449, 377 U.S. 288 27
Schnell v. *Davis*, 336 U.S. 933 9
Shub v. *Simpson*, 340 U.S. 881 18
South Carolina v. *Katzenbach*, 383 U.S. 301 9

Cases—Continued Page
Speiser v. *Randall*, 357 U.S. 513 28
Staub v. *City of Baxley*, 355 U.S. 313 24
Teitel Film Corp. v. *Cusack*, 390 U.S. 139 25
United States v. *Alabama*, 362 U.S. 602 ..... 9, 18
United States v. *Mississippi*, 380 U.S. 128 18
Whitley v. *Williams*, No. 36 ..... 20, 29, 30, 31
Whitus v. *Georgia*, 385 U.S. 545 24
Williams v. *Rhodes*, No. 543, 544, decided October 15, 1968 ..... 7, 22, 25, 32, 33
United States Constitution:
First Amendment 24, 25, 28
Fourteenth Amendment 19, 32
Fifteenth Amendment 22
Statutes:
42 U.S.C. 1973c (Section 5 of the Voting Rights Act of 1965) ..... *passim*
Act No. 243, of 1967 Special Session of the Alabama Legislature (the "Garrett Act") ..... *passim*
Code of Alabama (1958):
Title 1, Section 12 27
Title 17, Section 145 14
Title 17, Sections 274, 275 ..... *passim*
Title 17, Section 348 30
Title 17, Sections 413, 414 ..... 13, 27, 30
Miscellaneous:
United States Bureau of Census, *Census of Population: 1960, General Population Characteristics, Alabama*, Final Report 8
United States Commission on Civil Rights, Political Participation, Appendix VII 9



In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 647

SALLIE M. HADNOTT, ET AL., APPELLANTS

v.

MABEL S. AMOS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The majority and dissenting opinions of the three-judge district court (J.S. App. 1a–29a) are reported at 291 F. Supp. 309.

JURISDICTION

The decree of the district court (J.S. App. 30a–32a) was entered on October 11, 1968. A notice of appeal to this Court was filed on October 11, 1968. The Jurisdictional Statement was filed on October 14, 1968, and probable jurisdiction was noted on December 16, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATUTORY PROVISIONS INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, the relevant provisions of the Alabama Corrupt Practices Act (Sections 274 and 275 of Title 17 of the Alabama Code (1958)), and the Garrett Act (Act No. 243, of 1967 Special Session of the Alabama Legislature), are reprinted in Appendix A, *infra*, pp. 1a–5a.

QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, the disqualification of independent candidates for office in Alabama for failure to designate a finance committee within five days of the announcement of their candidacies was constitutional.

2. Whether the Probate Judge of Greene County validly disqualified independent candidates for local office on the ground that they had not been nominated by mass meeting when he gave no notice of the disqualification or opportunity to challenge it.

3. Whether a 1967 Alabama statute requiring all candidates for elective office to declare, before March 1, the offices for which they intend to run and the party whose nomination they seek, was unenforceable because not approved pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

STATEMENT

1. This suit, instituted on September 13, 1968, in the United States District Court for the Middle District of Alabama, was brought as a class action by the National Democratic Party of Alabama ("NDPA")

and some of its officers and candidates in the 1968 general election, predominantly Negroes,[1] against officials of the State of Alabama, including the Governor, Attorney General and Secretary of State, together with the probate judge of Autauga County (as representative of all the State's probate judges). The complaint (App. B, *infra*, pp. 6a–36a) alleged that the NDPA had, pursuant to State law, nominated candidates for various county and state-wide offices in Alabama and had submitted the names of these nominees for certification to the Secretary of State and for inclusion on appropriate ballots to the State's probate judges (who have the responsibility, under Alabama law, of preparing ballots to be used in each of the State's counties), but that the Secretary of State and the probate judges had refused to certify and place the names of these nominees on the ballot, in violation of the Constitution and federal law.

Since the complaint sought an injunction against the enforcement of various State statutes on federal constitutional grounds, a three-judge court was impaneled pursuant to 28 U.S.C. 2281. On September 16, 1968, the court held a hearing on appellants' motion for a temporary restraining order. At that time counsel for appellees stated to the court that the reasons for the Secretary of State's disqualification of the

[1] At least 60 of the 67 candidates for county or local office who ultimately ran under the NDPA label were Negroes. Each of 17 elected (in Etowah, Marengo and Sumter Counties) is a Negro, as are the 6 NDPA candidates in Greene County, who apparently would have prevailed had their names appeared on the ballot.

NDPA were (1) that the NDPA had failed to conduct a mass meeting at Huntsville, Alabama, on May 7, (a conclusion which the court below found insufficiently based) and (2) that the candidates had failed to comply with the "Garrett Act," a statute enacted at a Special Session of the Alabama Legislature in 1967 which requires every candidate for election to file by March 1 a declaration of intention to be a candidate, naming the political party with whose nomination he intends to run (App. A, *infra*, pp. 3a–5a); nothing had yet been alleged about non-compliance with the provision of the Corrupt Practices Act requiring designation of a financial committee (Ala. Code (1958), Tit. 17, § 274, App. A, *infra*, p. 2a). See J.S. App. 8a, 21a. Questions were also raised as to the willingness of certain NDPA nominees to run. In light of the new issues, the court offered both parties an opportunity to submit lists of the qualified and willing candidates. In response to this invitation, appellees alleged for the first time on September 17 that all the NDPA candidates were disqualified because they had failed to submit Corrupt Practices Act designations of committees to receive and disburse funds "within 5 days after certificates of the mass meetings of May 7, 1968, were filed in the Probate Offices and with the Secretary of State" (Defendants' letter to the district court dated September 17, 1968).

On September 18, the district court entered a temporary restraining order (Appendix C, *infra*, pp. 37a–45a), enjoining the named defendants and all the State's probate judges from preparing, distributing

or using any ballots which did not include the names of the NDPA candidates listed on two schedules attached to the order. Schedule 1 listed the NDPA candidates for United States Senator, eight seats in the United States House of Representatives, ten places as Presidential Electors, and for two State offices—President of the Public Service Commission and Representative in the Alabama House of Representatives from Madison County, District 3, Place No. 2. Schedule 2 listed 67 candidates for local offices in the following counties: Autauga (3), Colbert (4), Cullman (1), Dallas (2), Etowah (11), Greene (6), Jefferson (2), Lauderdale (2), Limestone (1), Madison (1), Marengo (6), Montgomery (2), Morgan (2), St. Clair (3), Sumter (12), Tuscaloosa (9), Wilcox (1).

On September 25, 1968, appellees filed their Answer (Appendix D, *infra,* pp. 46a–59a). After challenging the jurisdiction of the court and the standing of the plaintiffs and entering a general denial, appellees alleged that all the nominees on Schedule 1 were disqualified because they had failed to file the designation required by the Alabama Corrupt Practices Act. The Answer further alleged that certain named nominees on Schedule 1 were also disqualified (1) for failure to comply with the Garrett Act (2) because they were nominated for different numbered places on the ballot than was stated in their declarations of intention, and (3) because they were nominated for two positions on the ballot in violation of an Alabama statute. With respect to the local and county candidates on Schedule 2, the Answer alleged that either all or certain

named nominees in Autauga, Colbert, Cullman, Dallas, Etowah, Greene, Jefferson, Lauderdale, Limestone, Montgomery, Morgan and St. Clair counties were ineligible for one or more of the reasons specified with respect to nominees listed on Schedule 1. No specific allegation was made, in this regard, with reference to the candidates for local office in Marengo, Sumter, Tuscaloosa and Wilcox counties. Appellees did, however, allege in conclusion that none of the county and local nominees had filed designations under the Corrupt Practices Act "within five days from their meeting" (¶ 12, App. D, *infra*, p. 58a).

A hearing on the merits was held on September 30; the principal issues contested at that time were the constitutionality of the Garrett Act, the Corrupt Practices Act and the Secretary of State's conduct in determining that no mass meeting had been held on May 7. On October 11, by a two-to-one vote, the court dissolved the temporary restraining order and entered a judgment sustaining the constitutionality of all the challenged statutes—on their face and as applied—but enjoining the defendants from disqualifying any NDPA candidate for the alleged failure to conduct a mass meeting in Huntsville on May 7 (J.S. App. 30a–32a). Judge Johnson dissented (J.S. App. 25a–29a), concluding that the Corrupt Practice Act had been unconstitutionally administered because it was, for the first time, invoked by the Secretary *sua sponte*,[2] and that the Garrett Act violated the Equal

[2] The majority held that the claim of selective enforcement was "not proved" (J.S. App. 11a).

Protection Clause because the date prescribed for a declaration of intention of candidacy was "unreasonably early" (J.S. App. 27a) and was designed to protect the established political parties against independent challenges.[3]

Plaintiffs promptly appealed here. On October 14 and on October 19, 1968, this Court restored the district court's temporary restraining order of September 18 pending action on the Jurisdictional Statement. In compliance with these orders, the NDPA candidates appeared on all ballots in Alabama with the exception of the nominees for local office in Greene County. On November 5, NDPA nominees were elected to Justice of the Peace positions in Etowah (4), Marengo (5) and Sumter (4) Counties, and in Sumter County three NDPA candidates won seats as Constables and one was elected Chairman of the Board of Education. In Greene County, the NDPA candidates for local office were left off the ballot, except for absentee voters (see App. K, *infra*, pp. 78a–79a). But, it appears all—four candidates for County Commissioner and two for the Board of Education—would have won if their names had been listed.[4]

[3] Judge Johnson relied on the opinion of the three-judge District Court for the Southern District of Ohio, affirmed by this Court in *Williams* v. *Rhodes*, No. 543, this Term, October 15, 1968.

[4] In response to an order of the district court issued on December 17, 1968 (App. H, *infra*, pp. 72a–73a), the Probate

On November 15, appellants filed in this Court a "Motion for Order to Show Cause as to Why James Dennis Herndon, Judge of Probate, Greene County, Alabama, Should Not Be Held in Contempt of this Court and to Set Aside the Results of the Election in Said County and Cause New Elections to Be Held Therein." Thereafter, on November 21, upon motions submitted by the United States, the district court required appellants to show cause why the results of the November 5 election should not be enjoined with respect to the local offices in Greene County. See *Memorandum for the United States* filed in this Court on November 25, 1968, pp. 13–19. On December 20, the district court entered an order staying the effect of the recent election in Greene County (App. J., *infra,* pp. 75a–77a).

2. The relevant background of these proceedings is familiar history. Throughout most of the century preceding 1965 the Negro in Alabama, although sometimes in a numerical majority, as in Greene and Sumter Counties,[5] was generally excluded from the

---

Judge, Sheriff and Circuit Clerk of Greene County reported on December 20 (App. I, *infra*, p. 74a) that, of 4,118 ballots cast, 1,938 were marked for the NDPA "straight ticket," which would have been counted for NDPA candidates for local office, had they appeared on the ballot. According to the certificate of the Secretary of State (a copy of which has been lodged with the Clerk of this Court), the regular Democratic Party nominees for local office in Greene County—the only candidates appearing on the ballot—received between 1,699 and 1,709 votes each.

[5] According to the 1960 census, the voting age population in Greene County was: 5001 Negro, 1649 white; in Sumter County: 6,814 Negro, 3,061 white. U.S. Bureau of the Census, *Census*

political process by one device or another. See, *e.g.*, *Giles* v. *Harris*, 189 U.S. 475; *Giles* v. *Teasely*, 193 U.S. 146; *Schnell* v. *Davis*, 336 U.S. 933; *United States* v. *Alabama*, 362 U.S. 602; *Alabama* v. *United States*, 371 U.S. 37; *South Carolina* v. *Katzenbach*, 383 U.S. 301, 310–315. Thus, in 1964, less than 20 percent of the Negroes of voting age throughout the State were registered to vote [6] and the situation was even worse in Greene, Marengo and Sumter Counties, directly involved in this litigation.[7] But the Voting Rights Act of 1965 brought a radical change. In Greene County, for instance, federal examiners appointed under the Act registered approximately 2,000 Negro voters, and, today, there are about twice as many Negroes as whites registered to vote in the county.[8]

The new situation encouraged Negro candidacies in several Alabama counties in 1966.[9] In Greene County,

---

of Population: 1960, General Population Characteristics, Alabama, Final Report PC (1)–2B, Table 27.

[6] See *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313.

[7] Before the enactment of the Voting Rights Act, although there were three times as many Negroes of voting age as whites in Greene County, only 275 were registered to vote (less than 6 percent), as compared to 2,305 whites; in Marengo, less than 4 percent of the potentially eligible Negroes were registered; in Sumter, about 5 percent. U.S. Commission on Civil Rights, *Political Participation*, Appendix VII, Table 4, p. 224.

[8] The approximate figures are 4,000 Negroes, 2,000 whites. *Ibid.*

[9] In the 1966 Democratic primary election 54 Negroes ran in 19 counties; 7 for sheriff, 11 for ten places in the state House of Representatives, 1 for the state Senate and 35 for county office.

five Negroes ran for local office in the Democratic primary of May 3. Four of the Negro candidates initiated a civil suit challenging the conduct of that primary.[10] However, this case was never resolved. See *Gilmore et al.* v. *Greene County Democratic Executive Committee et al.,* Civil Action No. 66-341 (N.D. Ala.). Subsequently, some of the Negro candidates, including Thomas Gilmore who was seeking the office of Sheriff, attempted to participate in the general election as nominees of the Freedom Organization, but they were refused recognition by the Probate Judge (Judge Herndon, the respondent on the motion for contempt in the present proceeding). Although the Court of Appeals for the Fifth Circuit stayed the election, rejecting one ground of challenge to the Negro candidate (*Gilmore* v. *Greene County Democratic Executive Committee,* 368 F. 2d 328 (C.A. 5, 1966)), the white candidate for Sheriff (the present incumbent, Lee) ultimately obtained from the State courts an injunction eliminating his Negro opponent. *Herndon* v. *Lee,* 281 Ala. 61, 199 So. 2d 74; *Gilmore* v. *Lee,* 210 So. 2d 415. This ruling—invoked here—was based on the failure of the Negro candidate to file the certificate required by the Corrupt Practices Act designating a financial committee within five days after his designation as the nominee of the Freedom Organization—the court holding that the designation filed by the party with the Probate Judge in May was operative, rather than his own notice of acceptance several months later.

[10] The fifth Negro won in the primary and was elected to the board of education in November 1966.

The experience of 1966 no doubt prompted the enactment of the Garrett Act (App. A, *infra*, pp. 3a–5a) as emergency legislation in May 1967. The new provision required all candidates proposing to participate in the general election to declare their intention to run and their party label by March 1—more than two months before the primary election. This statute, however, was never submitted to the Attorney General of the United States, nor approved by the United States District Court for the District of Columbia, pursuant to Section 5 of the Voting Rights Act (App. A, *infra*, pp. 1a–2a).

In 1968, many local offices were contested by Negro candidates. In Greene County, four of the five places on the Court of County Commissioners (the governing body of the county) and two seats on the five-member Board of Education came up for election. On or before March 1, (in apparent compliance with the Garrett Act), the present appellants from Greene County—like their white opponents (of whom all but one are incumbents)—filed declarations of their candidacies for these positions with the Probate Judge on forms which designated themselves as their own finance committee (in apparent compliance with the Corrupt Practices Act). See App. E, *infra*, pp. 60a–64a.[11] In each instance, the designation indicated that

[11] Certified copies of these declarations, which do not appear in the record that was before the district court, have been lodged with the Clerk of this Court. Appendix E, *infra*, lists all candidates filing such declarations, together with the dates of filing, and reprints a sample declaration.

the candidate sought the nomination of the Democratic Party. The white incumbents won the Democratic primary on May 7, but on the same day the NDPA held a mass meeting in Greene County [12] and nominated the same Negro candidates for the same offices. Both groups filed satements of their expenses in connection with the primary (see App. F, *infra,* pp. 65a–67a),[13] but no candidate then submitted a new designation of a financial committee with a view to the general election. Indeed, the Democratic Party nominees apparently never filed such new designations.

Although the detailed facts have not been developed for the other county races in Alabama, the same pattern was apparently followed. On a statewide basis the Democratic Party primary of May 7, 1968, nominated presidential electors pledged to support former Governor George Wallace, who was not seeking the Democratic nomination for President, but was form-

[12] Although the NDPA County Chairman subsequently certified the fact (Exh. L to Answer), the Probate Judge has questioned the occurrence of this mass meeting, but concedes that it might have been held without his knowledge (Deposition of Herndon, pp. 33–35).

[13] Certified copies of these financial statements have been lodged with the Clerk of this Court. Appendix F, *infra,* lists those who filed such statements in Greene County, together with the dates of filing, and reprints a sample statement.

The candidates who participated (or sought to participate) in the general election of November 5 subsequently also filed statements of their expenses in that connection. Certified copies of those financial statements with respect to Greene County likewise have been lodged with the Clerk of the Court. Appendix G, *infra,* pp. 68a–70a, lists those who filed such statements, together with the dates of filing, and reprints a sample statement.

ing a national third party. Two groups of Alabama Democrats sought to put forth a slate of presidential electors who would support the nominees of the party's national convention. The Alabama Independent Democratic Party nominated a slate of presidential electors who subsequently were certified by the Secretary of State to the county probate judges for inclusion on the ballot. By county and district mass meetings held on May 7, 1968, and by convention and caucuses held in Birmingham on July 20, 1968, the National Democratic Party of Alabama nominated a slate of presidential electors, a candidate for U.S. Senator, a candidate for President of the Alabama Public Service Commission, a candidate for U.S. Representative in each of eight congressional districts and a candidate for the Alabama House of Representatives.

On August 14, the Secretary of State wrote to the NDPA stating that "documentary evidence" concerning "the holding of required meetings on May 7, 1968" had been presented to her "concerning the National Democratic Party of Alabama's noncompliance with the requirements of the Alabama election laws" (Exh. S to Complaint, App. B, *infra,* pp. 27a–28a).[14] The letter requested that the NDPA "show cause why [it] * * * should not be excluded from the November general election ballot" (*ibid.*). In response,

[14] Although the letter cited no specific provision of Alabama law, it appeared from subsequent proceedings in this case that appellee was relying upon the requirement of Alabama law that nominations (other than those arising out of primary elections) be made at mass meetings held on the first Tuesday in May. Ala. Code 1958, Tit. 17, §§ 413, 414.

appellant Cashin, by letter dated August 19, requested clarification of the charges and service of copies of the documentary evidence (Exh. T to Complaint, App. B, *infra*, pp. 28a–29a). The matter remained in abeyance until after the Democratic Convention in Chicago, at which both the AIDP and the NDPA challenged the seating of the regular Democratic Party delegates and the former prevailed. Immediately thereafter, however, the Secretary of State publicly announced that, notwithstanding the challenge previously made, she would certify the NDPA nominees for ballot purposes if the certifications were received by September 5 (see Complaint, ¶ 16(c), App. B, *infra*, p. 16a, and Exh. K to the affidavit of Dr. Cashin attached to the Complaint, pp. 3–4, being clippings from the *Huntsville Times* of September 1 and the *Huntsville News* of September 5).[15] Those certifications were duly filed with the Secretary of State by that date (Answer, ¶¶ 9–10, App. D, *infra*, pp. 49a–51a) and certificates for local nominations were mailed to the appropriate probate judges on September 4 and received in all instances except one (which is not relevant here) on September 5 or September 6 (Affidavit of F. J. Zylman, attached to Complaint, App. B, *infra*, pp. 29a–36a).

---

[15] Under Alabama law, nominees for state-wide or federal elections or any election throughout a judicial circuit or senatorial district must be filed with the Secretary of State "not less than sixty days before the day of election," and she must then "immediately" certify those nominees to the appropriate Probate Judge. In the case of county and local offices, the nominees must be certified directly to the Probate Judge within the same period. Ala. Code (1958), Tit. 17, § 145.

Appellants now assumed they would appear on the ballot. But there was yet to be one more change of mind by the Secretary of State. On September 10, Mrs. Amos publicly announced that she would not certify any of the NDPA candidates for inclusion on the ballot, except one candidate for United States Representative and the candidate for the Alabama House of Representatives (see Complaint ¶ 16, App. B, infra, p. 17a).[16] As already noted (*supra*, p. 4), neither then nor during the ensuing week was non-compliance with the Corrupt Practices Act stated as a reason for disqualification. A few days later, according to a recent deposition, the Probate Judge of Greene County, prompted by the County Solicitor who was attorney for the white incumbent candidates, determined that he would not place the NDPA candidates on the ballot because of their failure to timely file a new financial committee designation pursuant to the Corrupt Practices Act; but he did not so notify them (Herndon Deposition, pp. 29–31).[17] It does not appear, however, that the Probate Judges of Marengo or Sumter Counties ever intended to strike

[16] The court below noted that the reason underlying the two exceptions made by the Secretary of State "is not made clear" (J.S. App. 21a, n 16).

[17] Annexed to the Answer, filed in the court below on September 25, is an Affidavit from Judge Herndon dated September 20, explaining his disqualification of the local NDPA candidates because of failure to hold a mass meeting, failure to file Corrupt Practices Act designations of financial committees, and, with respect to some offices, failure to file declarations of intent under the Garrett Act. See Exhs. J and K to Answer. There is no indication that this affidavit was shown to appellants until the Answer was filed.

from the ballot the local NDPA candidates in their jurisdictions, although the same grounds were apparently available with respect to them also.[18]

As already noted, the present suit was filed on September 13, and a temporary restraining order requiring the inclusion of the NDPA candidates on the ballot was issued on September 18. Two days later, on September 20, a statement on behalf of the NDPA candidates designating each of them as his own finance committee under the Corrupt Practices Act was filed in the district court and with the Secretary of State and the appropriate Probate Judges.[19]

After receiving the district court's temporary restraining order, Judge Herndon caused the absentee ballots for the county to be printed with the names of all NDPA candidates (see App. K, *infra*, p. 79a). Before the regular ballots were printed, however, Judge Herndon, on October 14, learned of the district court's order of October 11 dissolving the re-

[18] As already noted (*supra*, p. 6), the Answer filed below makes no express allegation with respect to local NDPA candidates in those counties and no statement from either probate judge is annexed. The fair inference is that those officials intended to list the candidates on the ballot.

A letter dated September 23 from the Judge of Probate of Etowah County to the Attorney General of Alabama is attached to the Answer (Exh. I). Although it does not expressly draw any conclusion, the letter "informs" the Attorney General that the local NDPA candidates have not filed the finance committee designations required by the Corrupt Practices Act. Again, there is no indication that the candidates involved were notified.

[19] We are lodging with the Clerk of the Court a copy of that statement certified by Judge Herndon as received by him on September 21.

straining order, and, threatened with State court litigation by the attorney for the white incumbents, he directed the printer to omit the local NDPA candidates from the ballot (Deposition of Herndon, pp. 49–51, 63–64). At this same time Mrs. Amos was trying to determine how to rescind the certification of the federal and State candidates she had made pursuant to the District Court's order of September 18th. Before she decided, she learned of this Court's order restoring the temporary relief. (Deposition of Amos, p. 8).

Although the attorneys for the appellees were notified of this Court's orders of October 14 and October 18, they did not notify the Secretary of State (Deposition of Amos, p. 6) nor the probate judges (Deposition of Bookout, pp. 8–9). Judge Herndon read about the Court's action in the newspaper, but he did not think it applied to him or to the local county offices. The two newspapers which he normally reads had articles which stated that this Court had restored the injunction previously issued by the district court. Judge Herndon made no effort to find out whether the Court's order applied to him (Deposition of Herndon, pp. 45–48, 60–63, 70–71, 74–75).

ARGUMENT

INTRODUCTION AND SUMMARY

When this case came on for hearing in the court below, the general election had not yet been held in Alabama. The appellants—all of whom were seeking to have their names placed on appropriate ballots for

that election—had instituted this class action primarily to obtain relief directed at the November 5 election. In its current posture, as it is presented for decision by this Court, the case is markedly different. Although relief was denied below, interim orders entered here restored the NDPA candidates to the ballot and the election was held accordingly, except in one county. The issues before the Court are narrowed, therefore, to those which are relevant to the three counties where NDPA candidates were successful and to the claims of the six nominees who were kept off the ballot in Greene County. Except for the challenge to future enforcement of the Alabama statutes, the claims of the remaining candidates have been mooted by the results of the November 5 election. See, *e.g.*, *Shub* v. *Simpson*, 340 U.S. 881.

That is not to say that the case has dwindled to unimportance. On the contrary, it is no overstatement to characterize the basic question presented as whether the inexperienced efforts of the long-suppressed Negro electorate of Alabama shall be defeated, even now that its voice has been clearly heard, by belated invocation of very finicky requirements of local law. In many respects, the maneuverings of the responsible officials in the background of this litigation, here calculated to keep Negro candidates off the ballot, are reminiscent of earlier devices invoked to keep them off the registration rolls. See, *e.g.*, *United States* v. *Alabama*, 362 U.S. 602; *Alabama* v. *United States*, 371 U.S. 37; *United States* v. *Mississippi*, 380 U.S. 128; *Louisiana* v. *United States*, 380 U.S. 145. In our view, this attempt, also, must fail.

Specifically, three distinct challenges are advanced against some or all of the Negro candidates: (1) failure timely to comply with a provision of the Corrupt Practices Act which requires candidates to designate a financial committee within five days of their declaration of candidacy; (2) failure, in the case of the local NDPA candidates in Greene County, to hold the required mass meeting on May 7; and (3) failure to comply with the Garrett Act, enacted in 1967, which requires a declaration of candidacy, together with identification of party, before March 1 of the election year.

1. We turn first to the validity of the designation provision of Alabama's Corrupt Practices Act as applied to these appellants. We stress that the right to run for local elective office is, like the right to vote, protected by the Fourteenth Amendment, and that any limitation upon the right of local citizens to stand for public office must be judged by the same exacting standards as are applied to restrictions upon other constitutionally protected rights. Against the rights at stake, we assess the State interest in demanding meticulous compliance with the Corrupt Practices Act requirement, noting its apparent treatment as a minor formality by State officials. We comment on the uncertainties in the statute and the invitation to disparate treatment which it creates for local officials. Finally, focussing on the lack of notice or opportunity afforded to correct or contest an alleged technical delinquency, we conclude that, in the circumstances

revealed here (including substantial compliance and deceptive silence by officials), the belated invocation of the requirement against appellants was constitutionally impermissible.

2. We consider next the asserted failure of the Greene County candidates to be nominated by mass meeting. Here, as in the case of the Corrupt Practices Act, we believe that the objective of the statute is sustainable, but that in implementing it, the State may not deny prospective candidates an opportunity to confront and rebut whatever evidence the State officials may have of a failure to meet the statutory prerequisites. The probate judge of Greene County followed Alabama law in making his decision *ex parte,* without giving the NDPA nominees notice or opportunity to be heard. In an area so interwoven with constitutional rights, that procedure is simply inadequate.

3. Finally, we turn to the Garrett Act which, for the same reasons elaborated in our *amicus* brief in *Fairley* v. *Patterson, Bunton* v. *Patterson,* and *Whitley* v. *Williams,* Nos. 25, 26 and 36, this Term, we view as covered by Section 5 of the Voting Rights Act of 1965. Having failed to make it the subject of an action in the District of Columbia or to submit it for examination by the Attorney General, the appellees were not permitted to apply the Garrett Act in determining eligibility for the 1968 election.

I

APPELLANT CANDIDATES COULD NOT CONSTITUTIONALLY BE DISQUALIFIED FOR FAILURE TO COMPLY WITH THE FIVE-DAY DESIGNATION PROVISION OF THE ALABAMA CORRUPT PRACTICES ACT WITHOUT NOTICE AND AN OPPORTUNITY TO CORRECT TECHNICAL DEFECTS

The nominees of the National Democratic Party of Alabama were held disqualified to participate in the general election, among other reasons, because they allegedly failed to comply with a provision of the Corrupt Practices Act which requires every candidate "within five days after the announcement of his candidacy for any office," to file with the Secretary of State or, if he is running for county or local office, with the probate judge, "the name of not less than one or more than five persons elected to receive, expend, audit and disburse all moneys * * *." We do not dispute Alabama's authority to demand such a formal designation of a finance committtee. The question presented, in our view, is much narrower: it is whether, in the circumstances disclosed here, the radical statutory penalty of disqualification may be imposed for asserted non-compliance, without any opportunity offered for correction of the claimed technical defect. Several considerations lead us to answer that question in the negative.

First, it is important to remember that at stake here are some of "our most precious freedoms": "two different, although overlapping, kinds of rights—the

right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Williams* v. *Rhodes,* Nos. 543 and 544, decided October 15, 1968. The efforts of the NDPA to obtain a place on Alabama's ballot of November 5, 1968, involve both those rights—the latter being reinforced, in the circumstances of this case, by the Fifteenth Amendment's express prohibition against abridgment of the right to vote on account of race. It follows that only a "compelling state interest" could justify the frustration of the appellants' attempt to effectively associate as a political party and the free opportunity of their supporters to cast votes for them at the election. *Ibid.*

Second, the countervailing interest in meticulous adherence to the cited requirement of the Corrupt Practices Act is less than overwhelming. We are not dealing with a statutory standard of eligibility which sets down substantive qualifications for candidates for elective office, such as minimum age or residence requirements, or even educational or experience prerequisites. Nor is this a requirement designed to determine whether an announced candidate or party has sufficient support among the electorate to warrant giving the individual or his organization a place on the ballot. The State interest in obtaining a designation of a finance committee is, as the title of the Alabama legislation manifests, to prevent corrupt practices by insuring that a single individual or committee of not more than five can be looked to as respon-

sible for campaign contributions and expenditures. Although the statute prescribes that such a designation must be made within five days after the announcement of candidacy, no policy other than the general desirability of promptness would support an inflexible application of the five-day rule. The nominee, who, by oversight, fails to designate a finance committee but does so promptly upon being advised of his omission satisfies the statutory policy as thoroughly as the candidate who makes the designation without a reminder.

Third, although the statute provides that a noncomplying candidate "shall not be allowed to go upon the ballot at such election" and Alabama courts have enforced the penalty, there is reason to doubt how seriously the State treats the requirement. Indeed, the Corrupt Practices Act itself expressly provides that "any candidate may, if he sees fit to do so, declare himself" his own finance committee. And the standard printed form for declaring candidacy—used here—designates the candidate himself for this purpose, as though *pro forma.* See App. E, *infra,* pp. 60a–61a. Also revealing is the absence of any indication (as Judge Johnson noted in his dissenting opinion, J.S. App. 25a–26a) that Alabama officials have heretofore invoked the provision *sua sponte,* and its very belated appearance in this case as an "afterthought" (see J.S. App. 25a). And, finally, we note that the Probate Judges of Marengo and Sumter Counties have apparently never deemed it proper to object to the NDPA candidates on this ground, while the Probate

Judge of Etowah County did so ambiguously, with apparent hesitancy.

Fourth, the exact scope of the statutory requirement is far from clear. In *Herndon* v. *Lee,* 281 Ala. 61, 199 So. 2d 74, the Alabama Supreme Court held that the five-day period runs from the day of the Party's designation of the nominee, rather than from his formal notification of intention to run on the Party's ticket. Yet, in this case, designations filed on March 1 by the white candidates, long before they were certified as the nominees of the Democratic Party, were apparently deemed sufficient. Not so, however, with respect to the appellants, who filed identical designations on March 1, but ultimately ran under the NDPA label.

Fifth, the very ambiguities in the statute and the practical prerogative of local officials to invoke the provision or not, as they choose, affords obvious opportunities for disparate treatment. And, as we have just noted, such apparent anomalies occurred here, both in the different view taken of March 1 designations with respect to the white and Negro candidates and the different stance assumed by the various Probate Judges involved. Such a loose discretionary power is, of course, impermissible with regard to both the right to vote and rights derived from the First Amendment. *E.g., Louisiana* v. *United States,* 380 U.S. 145; *Staub* v. *City of Baxley,* 355 U.S. 313; cf. *Yick Wo* v. *Hopkins,* 118 U.S. 356; *Avery* v. *Georgia,* 345 U.S. 559, 564; *Whitus* v. *Georgia,* 385 U.S. 545, 552.

Sixth, the statutory scheme is especially vulnerable because the irrevocable penalty of striking from the ballot apparently can be imposed without notice or any opportunity given for contest or correction. As it affects the right to vote, such an untempered provision seems "too cabined and confined," all the more so as it operates against "a body of citizens lacking the habits and tradition of political independence and otherwise living in circumstances which do not encourage initiative and enterprise" (*Lane* v. *Wilson,* 307 U.S. 268, 276). Nor does the absence of notice and procedural safeguards fare better when the statute is judged under the First Amendment. See *e.g., Teitel Film Corp.* v. *Cusack,* 390 U.S. 139; *Freedman* v. *Maryland,* 380 U.S. 51; *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58; *Interstate Circuit, Inc.* v. *Dallas,* 390 U.S. 676, 682; *A Quantity of Books* v. *Kansas,* 378 U.S. 205, 210–211 (Opinion of Brennan, J.). Precisely because "[t]he right to form a party for the advancement of political goals means little if a party can be kept off the election ballots and thus denied an equal opportunity to win votes" (*Williams* v. *Rhodes, supra*), the decision to disqualify a candidate must be hedged about with all the safeguards that the imperatives of the election schedule make possible. Certainly, there is no reason why notice cannot be given to the delinquent of his alleged failure to designate a financial committee, together with a brief opportunity to contest or correct the deficiency.

Finally, the particular facts of this case demonstrate the impermissible enforcement of the Corrupt

Practices Act requirement against these appellants. What we have already said demonstrates that the NDPA candidates arguably complied by designating themselves as a finance committee when originally declaring their candidacies on March 1. That those designations were in terms directed to the Democratic Primary, rather than the general election, is apparently not a defect in itself, since it is all their opponents have ever done, without suffering disqualification. Indeed, it would be natural to presume that those were continuing designations in every case where the candidate remained an active contestant. At least, it was not unreasonable for the appellants to suppose they had sufficiently complied, especially in the absence of any notice or challenge on this ground from the appropriate officials.

Against this background, it was obviously unfair to invoke a purported default under the Corrupt Practices Act against these candidates so late in the day. It was more than a month after the NDPA nominees had been challenged on other grounds that this defect was first claimed. Although she blew alternately hot and cold on the NDPA nominations for some weeks, the Secretary of State never mentioned the Corrupt Practices Act until September 17, after this suit was filed to contest other charges. Within five days thereafter, the alleged defect was cured, but too late, it was ruled. Yet, if notice of the supposed delinquency had been given even on September 10 (when Mrs. Amos finally resolved to deny appellants a place on the ballot), a timely designation in full compliance with the statute might have been sub-

mitted.[20] It is apparent that the NDPA candidates were lulled into default. Constitutional rights of this magnitude cannot be deemed waived on such a basis.

We conclude that the concurrence of circumstances present in this case forbids the disqualification of appellants as candidates on the ground that they failed to make timely designation of a financial committee. That is too high a price to exact for the sake of procedural tidiness or some other "remote administrative benefit to the State." *Carrington* v. *Rash*, 380 U.S. 89, 96; *Harman* v. *Forssenius*, 380 U.S. 528, 542; cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 377 U.S. 288.

II

APPELLANT CANDIDATES IN GREENE COUNTY COULD NOT CONSTITUTIONALLY BE DISQUALIFIED FOR AN ALLEGED FAILURE TO HOLD A MASS MEETING, IN THE ABSENCE OF PROOF THAT NO SUCH MEETING WAS HELD

The second ground of ineligibility alleged with respect to the six NDPA candidates for local office in Greene County is that they were not nominated by mass meeting on the first Tuesday in May as required by Ala. Code 1958, Tit. 17, §§ 413, 414. The only evidentiary support for this conclusion is the affidavit of the probate judge which states that no such meeting was held to his knowledge (Exh. J to Answer), although he later deposed that a meeting might have been held without his knowledge (Herndon Depo-

[20] Such filing would have been "within five days" under the general rules applicable to computations of time in Alabama. Ala. Code 1958, Tit. 1, Sec. 12.

sition, pp. 33–35).[21] On the other hand, the certificate of nomination sent to the probate judge on September 4 stated that the nominees had been selected pursuant to a mass meeting (Exh. L to Answer). We submit that this basis for disqualification is factually insufficient.

The control exercised by local officials over the names which are to go on the ballot is in the nature of a prior restraint upon the enjoyment of First Amendment rights. One of the procedural safeguards fixed by the decisions of this Court for restrictions of this kind is that the State official—who seeks to impose the limitation—must bear the burden of proving the facts upon which the denial of the constitutionally protected right is based. E.g., *Freedman* v. *Maryland, supra,* 380 U.S. 51 at 58; *Speiser* v. *Randall,* 357 U.S. 513, 526. The same rule applies, we submit, when the issue is whether a nomination which appears formally sufficient has actually been arrived at in violation of law. The burden is then on the State official seeking to disqualify the nominee to establish that the nomination is defective.

In the present case the probate judge not only failed to satisfy this burden; he provided the Greene County candidates with no opportunity to hear the allegations or to answer them. And, from all that appears in the record, his conclusion that no mass meeting was held in Greene County rests entirely on the fact that no such meeting was brought to his attention. Such evidence—or lack of it—is plainly insufficient to sustain the denial of the constitutional rights asserted by the

[21] In the course of a deposition of the probate judge taken on December 27, 1968, he admitted that a mass meeting may have taken place in Greene County and explained that his affidavit was intended only to assert that he knew of no mass meeting.

NDPA candidates and their supporters. In this respect, we submit, the Probate Judge of Greene County stands on no firmer footing than the Secretary of State, whose disqualification of other NDPA candidates on the ground that no mass meeting was held at Huntsville was summarily disposed of by the district court as "a violation of basic principles of equal protection, due process and essential fairness" (J.S. App. 22a). For like reasons, the finding made by the probate judge should be rejected.

III

APPELLANT CANDIDATES COULD NOT BE DISQUALIFIED UNDER THE GARRETT ACT BECAUSE THAT STATUTE IS INOPERATIVE BY VIRTUE OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

Putting aside other possible challenges to the statute, we confine ourselves to the submission that the Garrett Act, enacted in May 1967, could not validly be applied to appellants because it has not been approved in the manner prescribed by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, which otherwise forbids the enforcement, in a State subject to the Act, of "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964."

1. In our amicus brief in *Fairley* v. *Patterson, Bunton* v. *Patterson,* and *Whitley* v. *Williams,* Nos. 25, 26 and 36, this Term, at pp. 11–27, we set forth our view as to the meaning of Section 5 of the Voting Rights Act. We argued that the language and purpose

of Section 5 bring within its reach legislative enactments which impose new conditions to be met by candidates for public office. Our submission, elaborated more fully there, is that a State statute which imposes such conditions restricts the range of choice available to the voters and thereby imposes "standards" or "prerequisites" with respect to voting.

The qualifying condition prescribed by the Alabama statute at issue here is essentially the same as one of the novel prerequisites imposed for candidates in Mississippi by the statute challenged in *Whitley* v. *Williams*, No. 36. In *Whitley* the amendment to the Mississippi Code required, *inter alia*, that independent candidates qualify for the general election at the same time as candidates were to qualify for the primary election. The Garrett Act had the very same effect. Prior to its enactment, every candidate wishing to run in a primary was required to file a declaration of candidacy by March 1. Ala. Code, 1958, Tit. 17, § 348. Independents were not subject to this requirement, however, and they were able to appear on the ballot after nomination by mass meeting held on the first Tuesday in May. Ala. Code, 1958, Tit. 17 §§ 413, 414. The effect of the Garrett Act was, like the counterpart statute in Mississippi, to require independent candidates to decide whether to run at the same time as candidates in the primary made their determination. The only distinction, in this respect, between this case and *Whitley* is that Mississippi law, prior to its amendment, permitted independent candidates to

qualify 40 days before the general election, whereas Alabama law prior to the Garrett Act authorized such candidacy only if the decision was made not later than the first Tuesday in May. In all other respects, however, the consequences of the statutory amendments enacted after the effective date of the Voting Rights Act of 1965 are identical in the two cases.

In this case, as in *Whitley*, we believe that the language and policy of Section 5 require that the new statutory provision not be applied until after review by a three-judge district court in the District of Columbia, or prior approval by the Attorney General. Accordingly, the appellee Secretary of State acted impermissibly in disqualifying independent candidates for failure to comply with the Garrett Act and future enforcement of that statute should now be enjoined.

2. We note here, as we did in our *amicus* brief in *Fairley, Bunton* and *Whitley, supra,* that although the constitutionality of the new legislation is not presently at issue, we are not urging reversal of the judgment below merely to require conformity with the prescribed statutory procedure. The Attorney General has not, of course, had an opportunity to give the Garrett Act plenary consideration, and the consequences of its implementation have not yet been fully explored. Such a full evaluation must await its submission to the Attorney General or, as Section 5 alternatively provides, the institution of an action in which the statute would be judged by a three-judge district

court in the District of Columbia. It suffices at this juncture to point out that in requiring independent candidates to declare on March 1, not only that they intend to run for office, but also to designate "the political party whose nomination for such office the person seeks * * * [or] that such person will be an independent candidate for the office," the Act prevents newly organized political groups from trying first to have their candidates elected in a party primary before determining to run as independents. A newly organized group such as the National Democratic Party of Alabama, which directs a major effort at Negro voters newly registered under the Voting Rights Act, cannot, under this system, first attempt to prevail in the Democratic Party primary before turning to independent candidates. Nor could it wait until the day of the primary before deciding whether to run independently. Hence, the change sought to be effected by the Garrett Act may well abridge the right to vote on account of race.[22] In the absence of a "compelling interest" justifying the requirement that an

[22] Since we believe that the Garrett Act may not permissibly be applied before it is submitted for review under Section 5, we do not think it necessary to discuss the question of its constitutionality under the Fourteenth Amendment in light of this Court's recent decision in *Williams* v. *Rhodes*, *supra*. We note, however, that the effect of requiring early declarations of candidacy is to discourage independent candidacies, and that here, as in *Williams*, the political group likely to be affected is one which "will rarely if ever be a cohesive or identifiable group until a few months before the election."

independent party engage in "extensive organization and other election activities by a very early date" (*Williams* v. *Rhodes, supra*)—which appellees have not demonstrated—the March 1 filing deadline may well impose an impermissible burden.

CONCLUSION

For the reasons stated, we conclude that the disqualification of appellants as candidates in the general election of November was impermissible. It follows that the judgment below should be reversed, and the cause remanded to the district court with the following directions:

(1) To issue an order directed to the appropriate state and county officials requiring them to treat the prevailing NDPA candidates in Etowah, Marengo and Sumter Counties as duly elected to the offices for which they ran;

(2) To issue an order requiring the appropriate State and local officials promptly to conduct a new election in Greene County for the offices of County Commissioner for District 1, 2, 3 and 4 and Places 1 and 2 on the County Board of Education, at which election the NDPA candidates for those positions shall appear on the ballot;

(3) To undertake such further proceedings as the district court may deem appropriate with respect to the alleged contempt of orders issued in this cause

by Probate Judge Herndon or other officials, as circumstances may suggest.[23]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
STEPHEN J. POLLAK,
Assistant Attorney General.
LOUIS F. CLAIBORNE,
Deputy Solicitor General.
NATHAN LEWIN,
FRANK M. DUNBAUGH,
Attorneys.

JANUARY 1969.

[23] We suggest further proceedings in the district court with respect to the motion for contempt because, as presently advised, we do not believe the necessary facts have been developed and deem further exploration of that issue here premature.

APPENDIX A

STATUTES INVOLVED

1. Section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c):

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b (a) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite,

standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

2. The pertinent provisions of the Alabama Corrupt Practices Act (§§ 274 and 275 of Title 17 of the Alabama Code (1958)):

> *§ 274. Committee to receive, expend, audit and disburse money or funds contributed.*— Within five days after the announcement of his candidacy for any office, each candidate for a state office shall file with the secretary of state, and each candidate for a county office or the state house of representatives shall file with the judge of probate of the county, and each candidate for a circuit or district office, including the state senate, shall file with the judge of probate of each county which is embodied in said circuit or district, a statement showing the name of not less than one nor more than five persons elected to receive, expend, audit, and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate, together with a written acceptance or consent of such persons to act as such committee, but any candidate, if he sees fit to do so, may declare himself as the person chosen for such purpose. If the statement required herein shall have been postmarked at any United States post office not later than midnight of the fifth day after the announcement of his candidacy, the candidate shall be deemed to have complied with the requirements of this section as to filing such statement within five days after the announcement of his candidacy. Such committees shall appoint one of their number to act as treasurer, who shall receive and disburse all moneys received by said committee; he shall keep detailed

account of receipts, payments and liabilities. The said committee or its treasurer shall have the exclusive custody of all moneys contributed, donated, subscribed, or in any wise furnished for or on behalf of the candidate represented by said committee, and shall disburse the same on proper vouchers. If any vacancies be created by death or resignation or any other cause on said committees, said candidate may fill such vacancies, or the remaining members shall discharge and complete the duties required of said committee as if such a vacancy had not been created. No candidate for nomination or election shall expend any money directly or indirectly in aid of his nomination or election except by contributing to the committee designated by him as aforesaid.

§ *275. Candidate acting as own committee.*— Any person who shall act as his own committee shall be governed by the provisions of this article relating to committees designated by candidates. Failure to make the declaration of appointment or selection by any candidate as herein required is declared to be a corrupt practice, and in addition the name of such candidate so failing shall not be allowed to go upon the ballot at such election.

3. The Garrett Act (Act 243 of the 1967 Special Session of the Alabama Legislature, approved May 11, 1967):

Section 1. The secretary of state is hereby prohibited from certifying to the judges of probate of the several counties and such judges of probate are prohibited from causing to be printed on the ballots for a general election the name of any candidate for a state, district or federal office who does not file a declaration of intention to become a candidate for such office with the secretary of state on or before the first day of March of the year in which such general election is held. Such declaration shall

include a statement designating the political party whose nomination for such office the person seeks; or if such person is not a candidate for nomination by a political party, then such declaration shall state that such person will be an independent candidate for the office. Provided, however, this section shall not apply to the printing on the ballot of the names of persons nominated by political parties to fill vacancies in such parties' nominations for state, district or federal offices when the vacancy occurs after March first of the year in which a general election is held; and the name of every candidate nominated by a political party to fill any such vacancy shall be printed upon the ballot for the general election, if such name is duly certified by the party, within the time prescribed by law, as such party's nominee.

Section 2. The judges of probate of the several counties are hereby prohibited from causing to be printed on the ballots for any general election in their respective counties the name of any candidate in such election for a county office who does not file a declaration of intention to become a candidate for such office with him on or before the first day of March of the year in which such general election is held. Such declaration shall include a statement designating the political party whose nomination for such office the person seeks; or if such person is not a candidate for nomination by a political party, then such declaration shall state that such person will be an independent candidate for the office. Provided, however, this section shall not apply to the printing on the ballot of the names of persons nominated by political parties to fill vacancies in such parties' nominations for county offices when the vacancy occurs after March first of the year in which a general election is held; and the name of every candidate nominated by a political party to fill any such vacancy shall be printed upon the

ballot for the general election, if such name is duly certified by the party, within the time prescribed by law, as such party's nominee.

Section 3. Qualification on or before the first day of March of an election year as a candidate for nomination in a primary election as a political party's candidate in the general election shall for the purposes of enforcing this Act be deemed a filing of a declaration of intention to be a candidate for such office in the general election within the meaning of such term as used in this Act.

Section 4. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 5. The provisions of this Act are supplemental. It shall be construed in pari materia with other laws regulating elections; however those laws or parts of laws which are in direct conflict or inconsistent herewith are hereby repealed.

Section 6. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

APPENDIX B

In the United States District Court for the Middle District of Alabama (Northern Division)

Civil Action No. ——

SALLIE M. HADNOTT; REVEREND WILLIAM MCKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR., AND THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, A CORPORATION FOR THEMSELVES JOINTLY AND SEVERALLY, AND FOR ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

MABEL S. AMOS, AS SECRETARY OF THE STATE OF ALABAMA; EDWARD A. GROUBY, AS JUDGE OF PROBATE FOR AUTAUGA COUNTY, ALABAMA; AND ALL OTHER JUDGES OF PROBATE OF THE STATE OF ALABAMA, JOINTLY AND SEVERALLY, WHO ARE SIMILARLY SITUATED; ALBERT BREWER, AS GOVERNOR OF THE STATE OF ALABAMA; MACDONALD GALLION, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND THEIR SUCCESSORS IN EACH OFFICE, DEFENDANTS

COMPLAINT

(1) This action arises under Article I, sections 2 and 3, Article II, Section 1 (as amended by Amendment XII), the First, Ninth, Fourteenth, Fifteenth and Seventeenth Amendments of the Constitution of the United States and the following provisions of the United States Code: Title 42 §§ 1981, 1983 and 1988; and the Voting Rights Act of 1965, 42 U.S.C. §§ 1971–73p. Jurisdiction is conferred on this court by §§ 1331,

1343 (3) and (4), 2201, 2281, and 2284 of Title 28 of the United States Code.

(2) The plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The prerequisites of subsections (a), (b)(1), (b)(2) and (b)(3) of that rule are satisfied. There are common questions of law and fact affecting the several rights of Negro and other citizens to be not deprived of the equal right to vote and to have their votes counted and to be candidates for public office. The members of the class [Negro and white voters, candidates and members of the National Democratic Party of Alabama, a corporation, (hereafter referred to as "NDPA")] are so numerous as to make it impracticable to bring them all before this court. The claims of the plaintiffs are typical of the claims of the class, and the relief sought against defendant Edward A. Grouby as Judge of Probate of Autauga County, Alabama, is typical of the relief sought against all Judges of Probate in Alabama. A common relief is sought. The interests of the class are adequately represented by plaintiffs and defendants. The prosecution of separate actions by and against individual members of the class would create a risk of:

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class, or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Furthermore, the parties opposing the plaintiffs' class have acted and re-

fused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

(3) Plaintiff, Sallie M. Hadnott, a Negro citizen of the State of Alabama, over the age of twenty-one years, resides at 626 Easy Street, Prattville, Autauga County, Alabama. Mrs. Hadnott is the duly qualified and properly selected NDPA nominee for election to the Board of Revenue and Control, District 2, Autauga County. She and all other individual plaintiffs are duly qualified and registered voters in the State of Alabama. She sues for herself and all other persons similarly situated.

(4) The plaintiff, Reverend Mr. William McKinley Branch is a Negro citizen of the State of Alabama over the age of twenty-one (21) and resides in Forkland, Greene County, in the 5th Congressional District of Alabama. The Reverend Branch is a duly qualified and properly selected NDPA nominee for election as a Presidential elector and for election to the United States House of Representatives from the 5th Congressional District of Alabama. He sues for himself and all other persons similarly situated.

(5) The plaintiff, Jack Drake, is a white citizen of the State of Alabama, over the age of twenty-one (21) years and resides in Tuscaloosa, Tuscaloosa County, Alabama. Mr. Drake is a duly qualified and properly selected NDPA nominee for election as Pres-

idential Elector. He sues for himself and all other persons similarly situated.

(6) The plaintiff, John Henry Davis, is a Negro citizen of the State of Alabama, over the age of twenty-one (21) years, and resides in Ashville, St. Clair County, Alabama. Mr. Davis is the duly qualified and properly selected NDPA nominee for election as a Presidential Elector and for election as President of the Alabama Public Service Commission. He sues for himself and all other persons similarly situated.

(7) The plaintiff, Robert P. Schwenn, is a white citizen of the State of Alabama, over the age of twenty-one (21) years and resides in Huntsville, Madison County, Alabama. He is a duly qualified and properly selected NDPA nominee for election as Presidential Elector and for election to the United States Senate. He sues for himself and all other persons similarly situated.

(8) The plaintiff, Thomas Wrenn, is a Negro citizen of the State of Alabama, over the age of twenty-one (21) years and resides in Birmingham, Jefferson County, Alabama. He is the duly qualified and properly selected NDPA nominee for election to the House of Representatives from the 6th Congressional District of Alabama. He sues for himself and all other persons similarly situated.

(9) The plaintiff, Dr. John L. Cashin, Jr., is a Negro citizen of the State of Alabama, over the age of twenty-one (21) years, and resides in Huntsville, Madison County, Alabama. He is the duly elected and qualified chairman of the NDPA, and a registered and qualified voter in said county and state. He sues for himself and as chairman of the NDPA, and on behalf of all members of the NDPA and all other persons similarly situated who are duly registered and qualified voters in the State of Alabama and who

desire the opportunity to vote for candidates nominated by the NDPA, and to have their votes counted.

(10) The plaintiff, NDPA, is a political party duly organized and incorporated under and by virtue of the laws of the State of Alabama. It brings this suit on its own behalf as a legal entity and on behalf of its members and nominees for local, state and national office. The NDPA seeks to further and advance, through the electoral process, the selection of progressive candidates for office on a basis other than race. It nominated its nominees for election in accordance with Title 17, § 413–416 Code of Alabama (Recomp. 1958) at properly held county and district meetings on May 7, 1968, and at its state convention held in Birmingham, Alabama, on July 20, 1968. Its nominees for national, state, county, and local office number, to-wit 119, 20 of whom are white and 94 of whom are Negroes. The race of 5 nominees is not known.

(11) Defendant Mabel S. Amos, and her successors in office, is sued individually and in her official capacity as the duly elected, qualified and acting Secretary of State of Alabama with her office and official residence in Montgomery, Alabama. The Secretary of State of the State of Alabama is a constitutional officer, a part of the executive branch of the government of the State (§ 112 of Article V of the Alabama Constitution of 1901), is the person to whom all returns of elections for members of the legislature must be made (*Id.* § 193), and "shall perform such duties as may be prescribed by law" (*Id.*, § 137; See also § 134). Among other duties, the Secretary of State of the State of Alabama is charged by law to:

Keep papers belonging to the legislature (Title 32, §§ 7, 10 and 29, Alabama Code (Recomp. 1958)) and engrossed copies of laws and joint resolutions (*Id.*,

§ 8); perform sundry duties, including the performance of "* * * such other duties as he is or may be required by law to perform" (Title 55, § 182, *Id.*, see also *Id.*, §§ 183–204); receive and preserve packages of ballots as well as written requests therefor from those appointed to decide election contests (Title 17, § 64(28), *id.*, as amended); receive certificates of namination by political parties as well as petitions of electors to nominate independent candidates and to certify the names of such nominees to the various judges of probate (*Id.*, § 145); receive returns of election and to be present for the opening and counting of those so received, the governor or attorney general also to be present thereat (*Id.*, § 201); furnish certificates of election to members of the legislature (*Id.*, § 205); furnish blank certificates of the results of elections for members of the legislature and receive same back when filled out (*Id.*, § 209); perform duties required for general elections in special elections (*Id.*, § 221); receive the names of members of a committee to receive, expend, audit and disburse campaign contributions (*Id.*, § 274); receive the certification of candidates for nomination to the legislature and certify same to the probate judges (*Id.*, § 334); receive notice of the entering of a primary election by the state executive committee or other governing authority of a political party (*Id.*, § 346); receive certification from the chairman of the state executive committee of a political party as to the names of nominees not having a majority, but running first and second in the first primary election and, in turn certifying those names to the various probate judges whose counties are affected thereby (*Id.*, § 366); certify to the probate judge lists of the nominees of political parties (*Id.*, § 369); notify probate judges of

the results of election contests before the state executive committee of a political party (*Id.*, § 387).

Defendant Amos has certified herself as a nominee of the Alabama Democratic Party (hereafter referred to as the "DP") for election as a Presidential Elector pledged, if elected, to support the candidacy of George C. Wallace for President of the United States.

(12) Defendant, Edward A. Grouby, and his successors in office, is sued in his official capacity as the duly elected, qualified and acting Probate Judge for Autauga County, Alabama, and further as the representative of that class consisting of all Probate Judges in the State of Alabama. A judge of probate has authority "to exercise such other powers as are, or may be, conferred on him by law" (Title 13, § 297, Alabama Code (Recomp. 1958); see also *Id.* §§ 271–312). Among other duties of probate judges they are charged by law to:

Cause to be delivered to each polling place alphabetical lists of those who have paid their poll tax and those who are registered to vote thereat (Title 17, § 138, *id.*); receive and preserve for a time, one copy of the certificate of results of an election (*Id.* § 139); receive certification of nominations by political parties for state legislative offices as well as certification of those independent candidates properly nominated therefor by petitions of electors and to cause the names of such nominees to be printed upon the ballots utilized in his county (*Id.* § 145); receive from candidates not accepting their nominations notification to that effect (*Id.* § 148); preserve all certificates and petitions for nomination for six months after the election (*Id.* § 168); cause the printing of voter instruction cards (*Id.* § 165); cause ballots, blank poll lists, certificates of results, oaths, and all other stationery

and blank forms necessary to conduct the election to be printed and cause the foregoing to be properly distributed (*Id.* § 186); assemble with others, and make a correct statement of election results (*Id.* § 199); receive the original public declaration of the results of an election of members of the house of representatives and to record same and provide certified copies thereof and to allow a copy thereof to be posted on the courthouse door (*Id.* § 200); receive and forward to the secretary of state certificates setting forth the returns of election for members of the legislature (*Id.* § 209); perform duties required for general elections in special elections (*Id.* § 221); receive the names of members of a committee to receive, expend, audit and disburse campaign contributions (*Id.* § 274) and receive from it detailed, itemized statements of expenditures made (*Id.* § 278) with an affidavit of the candidate attached thereto (*Id.* § 280); prepare and distribute ballots for the primary elections (*Id.* §§ 344, 366); furnish to the officers of a primary election supplies as well as envelopes (*Id.* § 354); supply voters whose vote are challenged with certificates to the effect that such voters' names are on official voters lists (*Id.* § 355); allow his office to be utilized as the proper place for receipt of ballot boxes by the county chairman of a political party (*Id.* § 363); receive from the secretary of state lists of the nominees of the political parties (*Id.* § 369); furnish certified copies of the registration lists to the parties to an election contest (*Id.* § 377); receive notification of the results of election contests before the state executive committee of a political party (*Id.* § 387); accept expense accounts of candidates for the legislature (*Id.* § 400).

(13) Defendant, Albert Brewer, and his successors in office, is sued in his official capacity as the duly qualified and acting governor of the State of Alabama

with his office and official residence in Montgomery, Alabama. The Governor is charged with the general duty of enforcing the Statutes of the State of Alabama and with the particular responsibility under Title 17 of proclaiming the results of the election (*Id.* § 202); proclaiming the results of elections on amendments to the Constitution (*Id.* § 212); ordering special elections (*Id.* § 217); proclaiming special election for representatives in Congress or state office (*Id.* § 218); estimate the election returns, ascertain who are elected, and notify them by proclamation (*Id.* § 224) and in case of a tie in the election of Presidential Electors break such tie by casting the decisive vote (*Id.* § 225).

Defendant Brewer has been certified by Defendant Amos as a nominee of the DP for election as a Presidential Elector pledged if elected, to support the candidacy of George C. Wallace for President of the United States. Mr. Wallace is the candidate of the American Independent Party for President of the United States in states other than Alabama.

(14) Defendant, MacDonald Gallion, is the duly elected, qualified and acting Attorney General of the State of Alabama, with his office and official residence in the City of Montgomery, Montgomery County, in said state. The Attorney General of Alabama is a constitutional officer, a part of the executive branch of the government of that state (§ 112 of Article V of the Alabama Constitution of 1901), and "shall perform such duties as may be prescribed by law" (*Id.* § 137). Among other duties of the Attorney General of Alabama, he is charged by law to:

Appear in the courts of the United States when so required by the Governor, in writing (Title 55, § 228, Alabama Code (Recomp. 1958)); institute and to prosecute all civil actions necessary to protect the

rights of the state (*Id.* § 229); advise probate judges (*Id.* § 240); the secretary of state and other state departments (*Id.* § 228) as to the law and a written opinion from him protects the state or county officer receiving it from liability for official acts performed in accordance wherewith (*Id.* § 241); direct and control all litigation concerning the interests of the state or a department thereof and (with the approval of the governor) to hire counsel therefor (*Id.* § 244); be present, in company with the governor or secretary of state for the official canvass (the opening and counting) of all returns of elections required by law to be sent to the secretary of state (Title 17, § 201, Alabama Code (Recomp. 1958)).

Defendant Gallion has been certified by defendant Amos as the nominee of the DP for election as a Presidential Elector pledged, if elected, to support the candidacy of George C. Wallace for President of the United States.

First Cause of Action

(15) Plaintiffs allege on information and belief: (a) that the Alabama Democratic Party of which the defendants (each of whom is white) is a member is governed by a State Executive Committee consisting of seventy-two (72) white persons and no Negroes; (b) that the state party offices of the American Independent Party, the Alabama Democratic Party, the Prohibition Party, the Alabama Republican Party, and the Alabama Conservative Party are held by white persons only; (c) that the Alabama Democratic Party office holders in Alabama are as follows—probate judges, 67 whites, no Negroes; members of the State House of Representatives, 106 whites, no Negroes; members of the State Senate, 35 whites, no Negroes; sheriffs, 66 whites, 1 Negro, and all

State Supreme Court, Court of Appeals, circuit and county judges are white. Additionally, upon information and belief, neither the Alabama Independent Democratic Party, the American Independent Party, the Alabama Democratic Party, the Prohibition Party, the Alabama Republican Party nor the Alabama Conservative Party have nominated a single Negro for election to a state, local, county or national office. Three Negroes have been nominated for election as Presidential Electors by the Alabama Independent Democratic Party (hereafter referred to as the "AIDP").

(16) Defendant Amos prior to September 5, 1968: (a) refused to allow the NDPA to utilize the symbol of the donkey as its party emblem; (b) stated she would refuse to allow the NDPA a position on the general election ballot and deny its nominees certification and the printing of their names on said ballot; and, (c) following the Democratic National Convention in Chicago retracted such position publicly stating that she would allow the NDPA a place on the general election ballot and would certify the names of its nominees and have their names appear on said ballot. Thereafter, on September 5, 1968, plaintiff Cashin filed with defendant Amos a Certificate of State Convention setting forth the names of NDPA nominees for Presidential Electors, United States Senator and members of the United States House of Representatives, President of the Alabama Public Service Commission, and place 2, District 3, (Madison County) for the Alabama House of Representatives a vacancy occasioned by the resignation of the person then holding such office. Simultaneously, and for the information of said defendant, he provided her with a list of the names of NDPA nominees for county and local office. Defendant Amos accepted such filing and did

not indicate that she then intended to deprive plaintiffs of ballot position or NDPA nominees the printing of their names on ballots. On September 10, 1968, plaintiffs learned from press accounts that all party nominees had been denied the right to have their names placed upon the general election ballot except for plaintiff Branch and Myrna Copeland, the nominee for the aforementioned vacancy in the State House of Representatives.

(17) The said action of the defendants Amos and Grouby deprived plaintiffs and the Negro and other voters of Alabama of the equal right to vote for candidates of their own choosing and to have those votes counted in violation of the due process and equal protection of laws clauses of the fourteenth amendment, the right to freely express themselves as guaranteed by the first amendment, the right to vote and run for political office regardless of race as guaranteed by the fourteenth and fifteenth amendments and the rights retained by the people as guaranteed by the ninth amendment all of the Constitution of the United States.

Second Cause of Action

(18) Plaintiffs reallege paragraphs. (1) through (16) hereof, inclusive, in their entirety.

(19) Declarations of intention were filed and compliance was had with the provisions of Act No. 243, of the Alabama Legislature, Special Session, 1967 (hereafter referred to as the "Garrett Law") for the offices of Presidential Elector, United States Senator, and President of the Alabama Public Service Commission. Such declarations were filed for the offices of Representative in the United States House of Representatives for Districts 2, 3, 4 and 5. They were not filed for Districts 1, 6, 7 and 8. Plaintiff Hadnott (NDPA nominee for election to the Board of

Revenue and Control, District 2, Autauga County) attempted to have filed a declaration of intention with Defendant Grouby on or before March 1, 1968, but was denied the right to have this done at his office. Later, she was offered the opportunity to come to his residence in the nighttime to file said declaration with him. This she refused to do. On September 5, 1968, during the business day, she attempted to file a duly executed Certificate of Mass Meeting setting forth her nomination and other nominations with Defendant Grouby but he was absent from his office. On that day she deposited the said certificate in the United States mail postage prepaid properly addressed to said defendant. Plaintiff Wrenn (NDPA nominee for election as Representative from the 6th Congressional District) neither filed nor attempted to file a declaration of intention but did on September 5, 1968, file with the Judge of Probate of Jefferson County, Alabama, a duly executed Certificate of Mass Meeting setting forth his nomination and, on the same day was designated a nominee by the NDPA in the Certificate of State Convention filed with Defendant Amos.

(20) The Garrett Law (Act No. 243, Alabama Legislature, Special Session 1967) is unconstitutional on its face and in its application to plaintiffs and the class they represent in the following respects:

(a) The requirement that a candidate file a notice of intention eight months prior to the general election is arbitrary, capricious and unreasonable and in violation of the due process and equal protection clauses of the fourteenth amendment.

(b) The Act invidiously discriminates against minority political parties and their members in violation of the equal protection clause of the fourteenth amendment.

(c) The Act was racially motivated, or alternatively has a racially exclusive effect, is invidiously discriminatory, and perpetuates white-only political office retention in the state of Alabama in violation of the first, ninth, fourteenth and fifteenth amendments of the Constitution of the United States.

(d) The effect of the Act is to unjustifiably prevent plaintiffs from seeking public office and to effectively disenfrancise plaintiffs and the class they represent in violation of Article I, Sections 2 and 3, Article II, Section 1 (as amended by Amendment XII), the first, ninth, fourteenth, fifteenth, and seventeenth amendments of the Constitution of the United States.

Third Cause of Action

(21) Plaintiffs realleged paragraphs (1) through (16) and (19) through (20) hereof, inclusive, in their entirety.

(22) The refusal of the defendants Amos and Grouby and Judges of Probate of Alabama to place the names of the full slate of NDPA nominees on the ballots deprives plaintiffs and the class they represent of the right to vote a straight ticket for the nominees of the party (a right otherwise guaranteed them by the law of Alabama (Title 17, § 157, Code of Alabama (Recomp. 1958) and assured those who desire to vote a straight ticket for the nominees of Alabama's Democratic and Republican Parties). It additionally deprives the nominees of the NDPA of the political strength derivable from straight ticket voting. Said refusal further requires the Negro and other voters of Alabama who desire to vote for candidates for Presidential Elector who support the national nominees of the Democratic Party for President to vote a split ticket.

(23) The denial to illiterate voters of the State of Alabama of the right to vote a straight party ticket for the nominees of the NDPA constitutes a test or device as defined by Section 4 of the Voting Rights Act of 1965. (Title 42 U.S.C. § 1973 b).

(24) The action of the defendants in the aforementioned respects deprives the plaintiffs and the class they represent of the equal right to vote in violation of the due process and equal protection of laws clauses of the fourteenth amendment, the fifteenth and seventeenth amendments, Article I, Sections 2 and 3, Article II, Section 1 (as amended by the twelfth amendment) and the first and ninth amendments all of the Constitution of the United States, and Title 42, Sections 1981 and 1983 U.S.C. and Title 28 Sections 1971–73 p, U.S.C., more particularly, Title 28 U.S.C. Sections 1973 b and i (a).

Fourth Cause of Action

(25) Plaintiff realleges paragraphs (1) through (16), (19) through (20) and (22) through (23), inclusive, in their entirety.

(26) Plaintiffs aver upon information and belief that other parties assigned ballot space by the defendants Amos and Grouby and other judges of probate and the nominees for election by such parties were placed on the ballot despite their non-compliance with applicable provisions of the law of Alabama. For example the Alabama Independent Democratic Party ("AIDP") is by the terms of its charter (See Exhibit B to the affidavit of John L. Cashin, Jr., filed simultaneously herewith) not definable as a political party nor does such party purport to be more than a vehicle for nomination of candidates for Presidential Elector.

(27) Prior to September 5, 1968, negotiations were conducted with the chairman of the AIDP in which the NDPA offered to nominate for Presidential Elector the nominees selected by the AIDP and to place them on the NDPA ballot. The AIDP declined to do so on the ground that Title 17, Section 148, Code of Alabama (Recomp. 1958) which provides, in part, that: "[t]he name of each candidate shall appear but one time on said ballot, and under only one emblem" forbade such action.

(28) The Presidential Elector nominees of the NDPA are pledged to support the nominees for President and Vice-President of the Democratic National Convention and intend to do so if elected unless requested to withdraw or not do so by said Democratic nominees in which event they will consider themselves unpledged.

(29) Title 17, Section 148, Code of Alabama (Recomp. 1958) is facially unconstitutional and unconstitutional in its application to plaintiffs in that it violates Article I, Sections 2 and 3, Article II, Section 1 (as amended by the twelfth amendment), the [illegible] ninth, the due process and equal protection clauses of the fourteenth amendment, the fifteenth and seventeenth amendments, all of the Constitution of the United States and the Voting Rights Act of 1965 (Title 42, Sections 1971–73(p)).

Fifth Cause of Action

(30) Plaintiff realleges paragraphs (1) through (16), (19) through (20), (22) through (23), and (26) through (28) hereof, inclusive, in their entirety.

(31) Title 17, Section 125, Code of Alabama (Recomp. 1958) which provides that where more than two parties submit lists of persons to serve as inspector and clerk for each voting place to the appoint-

ing board (judges of probate, sheriffs, and clerks of the circuit courts) ". . . appointments shall be made from the lists presented by the two political parties having received the highest number of votes in the state in the next preceding regular election. . . ."

(32) Title 17, Section 125, Code of Alabama (Recomp. 1958) is facially unconstitutional and unconstitutional in its application to plaintiffs in that it violates Article I, Sections 2 and 3, Article II, Section 1 (as amended by the twelfth amendment), the first, ninth, the due process and equal protection clauses of the fourteenth amendment, the fifteenth and seventeenth amendments, all of the Constitution of the United States and the Voting Rights Act of 1965 (Title 42, Sections 1971–73(p) U.S.C.).

Sixth Cause of Action

(34) Plaintiff realleges paragraphs (1) through (16), (19) through (20), (22) through (23), and (26) through (28) hereof, inclusive, in their entirety.

(35) Title 17, Sections 224 and 225 Code of Alabama (Recomp. 1958) provide that the Governor estimate the returns, ascertain who has been elected and issue proclamations of election and cast the deciding vote if the nominees for Presidential Elector are tied. Section 224, *id.* provides that the Attorney General or Secretary of State witness the acts of the Governor under said section.

(36) The defendants Amos, Brewer and Gallion, Governor, Secretary of State and Attorney General respectively are each nominees of the Alabama Democratic Party for Presidential Elector and are pledged to support the candidacy of George C. Wallace for President. By virtue of their dual position as candidates and election officials they are placed in a position of having conflicting interests in violation of the

due process and equal protecton of laws clauses of the fourteenth amendment and Article II Section 1 (as amended by the twelfth amendment) of the Constitution of the United States and such statutes are unconsitutional in their application to the November 5, 1968, general election.

Seventh Cause of Action

(36a) The ten nominees for Presidential Elector proposed by the Alabama Democratic Party include seven state officers who hold offices of profit. Nominees for places one through three, six, and eight through ten are, respectively: Earl Morgan, District Attorney for the Tenth Judicial Circuit of Alabama; defendant Amos, Secretary of State of Alabama; defendant Gallion, Attorney General of Alabama; Richard "Dick" Beard, Commissioner of Agriculture and Industries of Alabama; defendant Brewer, Governor of Alabama; Mrs. Agnes Baggett, Treasurer of Alabama and Dr. Ernest Stone, Superintentent of Education of Alabama.

(36b) Article II, Section 1, Clause 2 of the Constitution of the United States provides, in part, ". . . no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

(36c) Although the seven aforementioned nominees for Presidential Elector do not hold office under the United States they are state officers subject to the sanctions of Sec. 280 of the Alabama Constitution of 1901 and Title 41, Section 5 (7) which provides, in part, that no person shall ". . . hold two offices of profit at one and the same time under this state. . . ." The office of Presidential Elector is an office of profit.

(36d) The aforementioned nominees of the Alabama Democratic Party are prohibited by Section

280 Alabama Constitution of 1901 from serving as Presidential Elector and retaining their presently held state offices on December 10, 1968, if elected.

Equitable Relief

(37) Plaintiffs further show that this is a proceeding wherein they seek a declaration of their rights pursuant to § 2201 of Title 28, U.S.C., setting forth that the defendants, their officers, agents, servants, employees, or attorneys and those persons in active concert or participation with them, are utilizing, enforcing and maintaining a policy, custom, practice, scheme or usage which arbitrarily, intentionally and systematically deprives them of their equal right to vote and to run for public office, thereby violating Article I, Sections 2 and 3, Article II, Section 1 (as amended by the twelfth amendment) and the first, ninth, fourteenth, fifteenth, and seventeenth amendments of the Constitution of the United States and the Voting Rights Act of 1965. They seek additionally a declaration of the facial and applicatory unconstitutionality of Act No. 243, Alabama Legislature, Special Session, 1967 (the Garrett Law) and Title 17, Sections 125 and 148, Code of Alabama (Recomp. 1958) and the applicatory unconstitutionality of Sections 224 and 225 *id.*

(38) There is between the parties an actual controversy as herein set forth. The plaintiffs, and others similarly situated and affected on whose behalf this suit is brought are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of; they have no plain adequate or complete remedy to redress the wrongs and unlawful acts herein complained of, other than this action for a declaration of rights, temporary restraining order and an injunction, any other

remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury, damage and inconvenience to the plaintiffs and those similarly situated.

WHEREFORE, PREMISES CONSIDERED, on all causes of action, separately and severally, plaintiffs respectfully pray that this Court take jurisdiction of this case, that a special three-judge court be called to hear and determine this cause as by law provided in 28 United States Code, § 2281 et seq., that it issue a temporary restraining order and a preliminary injunction to be made permanent later against the defendants, their officers, agents, servants, employees, or attorneys and those persons in active concert or participation with them, and plaintiffs further pray that the Court advance this case on the docket and order a speedy hearing thereof and upon such hearing adjudge, decree and declare the rights and legal relations of the parties hereto in order that such declaration shall have the force and effect of a final judgment or decree, and plaintiffs further pray that the Court enter a judgment or decree declaring the practice, policy, custom, or usage of the defendants, their officers, agents, servants, employees or attorneys and those persons in active concert or participation with them in depriving them of their equal right to vote and the right to run for public office in violation of the laws and Constitution of the United States.

Plaintiffs further pray that the defendants, their agents, officers, servants, employees or attorneys and those persons in active concert or participation with them be temporarily and permanently enjoined from enforcing those provisions of the Alabama Code hereinbefore set forth in a manner which would deprive

plaintiffs and all other persons similarly situated from their equal right to vote and the right to run for public office, said injunction to include but not be limited to the following:

1. The defendants Amos, Brewer and Gallion be required either to surrender their right to serve as estimators, counters of ballots, proclaimers or certifiers of results, or tie-vote breakers in the November 5, 1968, general election or, in the alternative, to cause their names to be removed from the ballot as nominees for Presidential Elector under the Alabama Democratic Party or any other party name or label.

2. That the defendant Amos show cause as to her reason for placing the names of all Presidential Elector nominees on the ballot under their respective party labels and, in the event such nominees or parties be shown not to have been nominated or formed in accordance with the law of Alabama, or in the event no or insufficient cause be shown for placing such names or parties on the ballot, order her to remove such names or parties therefrom.

Plaintiffs pray such other further and general relief as may be appropriate under the premises.

Respectfully submitted.

/s/ Charles Morgan, Jr.

CHARLES MORGAN, JR.
5 Forsyth Street, N.W.,
Atlanta, Georgia 30303,
ORZELL BILLINGSLEY, JR.,
1630 Fourth Avenue North,
Birmingham, Alabama 35203,
Attorneys for Plaintiffs.

MELVIN L. WULF,
Eleanor Norton,
156 Fifth Avenue,
New York, New York 10010.
Of Counsel

Verification of Complaint

I John L. Cashin, Jr., have read the foregoing complaint. I am informed and believe and upon such information and belief state that all matters asserted therein are true.

/s/ JOHN L. CASHIN, Jr.

Sworn to and subscribed before me at Atlanta, Georgia this 13th day of September, 1968.

/s/ LYNNE WISDOM,
Notary Public, Georgia,
State at Large.

My Commission Expires April 21, 1972. (Seal)

(EXHIBIT S TO AFFIDAVIT OF JOHN L. CASHIN, JR., ATTACHED TO COMPLAINT)

STATE OF ALABAMA,
OFFICE OF SECRETARY OF STATE,
Montgomery, Ala., August 14, 1968.

Mr. ALVIS HOWARD, Jr.,
Chairman, National Democratic Party of Alabama,
Huntsville, Ala.

DEAR MR. HOWARD: Responsible citizens have presented documentary evidence to me concerning the National Democratic Party of Alabama's non-compliance with the requirements of the Alabama election laws. The evidence concerns the holding of required meetings on May 7, 1968. It is available for your inspection.

In view of this evidence, I must call on you to show cause why the National Democratic Party of Alabama should not be excluded from the November general election ballot.

I intend to handle this matter with absolute impartiality and fairness. I would appreciate your provid-

ing any evidence at your disposal at the earliest possible date in order that you will not be prejudiced by a hurried consideration of it.

Yours very truly,

/s/ Mabel S. Amos
MABEL S. AMOS,
Secretary of State.

(EXHIBIT T TO AFFIDAVIT OF DR. JOHN L. CASHIN, JR., ATTACHED TO COMPLAINT)

AUGUST 19, 1968.

MRS. MABEL AMOS,
Office of Secretary of State,
Montgomery, Ala.

MRS. AMOS: This will inform you of the receipt of your letter written August 14, 1968 and received, August 17.

Please send four copies of the "documentary evidence" in your possession concerning "the holding of required meetings on May 17, 1968," to me at the above address, four copies to me at the Conrad Hilton Hotel in Chicago, and four copies to our Counsel, Orzell Billingsley, at the Masonic Temple Building in Birmingham, Alabama. Further, please clarify any charges you are making against The National Democratic Party of Alabama, as your letter failed to mention what evidence you wish to see.

Since you stated that you wish to handle this matter with absolute impartiality and fairness, since you wish an early reply, and since you are already aware of the necessity for being in Chicago, I would appreciate it if you would send the copies of the alleged "documentary evidence" at the earliest possible date.

It is hard to believe that the public or the courts would find credible the "absolute impartiality and

fairness" of a candidate for public office in a judgement made concerning a competing political party. Therefore, to make this intention to be impartial and fair, I call upon you to withdraw as a candidate for elector on the Alabama Democratic Party slate.

Yours truly,

JOHN L. CASHIN.

JLC:ars
cc:
Vice President Hubert Humphrey
Senator Eugene McCarthy
Senator McGovern
Charles Morgan, Jr.
Stephen Raphael
Joseph Raub
Orzell Billingsley

(AFFIDAVIT OF F. J. ZYLMAN, ATTACHED TO COMPLAINT)

In the United States District Court for the Middle District of Alabama (Northern Division)

Civil Action No. ——

SALLE M. HADNOTT, ET AL., PLAINTIFFS

vs.

MABEL S. AMOS, ETC., ET AL., DEFENDANTS

AFFIDAVIT

F. J. Zylman, being duly sworn, deposes and says: As Executive Director of the National Democratic Party of Alabama, in the performance of my duties, in order to file the names of nominees for local office in those counties where, on May 7, 1968, mass meet-

ings were held and candidates nominated, I performed the following acts:

I mailed to the Judge of Probate of Bibb County a Certificate of Mass Meeting ("certificate") signed by NDPA County Chairman Earwin Lockett filing NDPA nominees for county office. This was mailed Air Mail, Special Delivery Certified Mail on September 4, 1968, and a return receipt was received indicating that it was delivered on September 5, 1968 (copy of certificate and return receipt are Attachment 1 hereto).

I mailed to the Judge of Probate of Colbert County a certificate signed by NDPA County Chairman Charlie Burgess filing NDPA nominees for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return slip, though requested, has not been received (copy of certificate and receipt request record are Attachment 2 hereto).

I mailed to the Judge of Probate of Cullman County a certificate signed by NDPA County Chairman Sandra Nesmith filing NDPA nominees for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received indicating that it was delivered September 6, 1968 (copy of certificate and return slip are Attachment 3 hereto).

I mailed to the Judge of Probate of Etowah County a certificate signed by NDPA County Chairman Isaiah Hayes, III, filing NDPA candidates for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was delivered on September 5, 1968 (copy of certificate and return receipt are Attachment 4 hereto).

I mailed to the Judge of Probate of Jefferson County a certificate signed by NDPA County Chairman and 6th District Chairman F. J. Zylman (myself), filing NDPA candidates for county office. I chaired the mass meeting, and the certificate correctly stated that said meeting held May 7, 1968 was also the meeting for the 6th District, which is fully contained within Jefferson County so that at the meeting, Thomas (Tommy) Wrenn was nominated for Congress in the 6th Congressional District of Alabama. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was delivered on September 5, 1968 (the attached certificate, a reproduction by my hand of that which was filed, and the return receipt are Attachment 5 hereto)

I mailed to the Judge of Probate of Lauderdale County a certificate signed by NDPA County Chairman James I. Barnett, filing NDPA candidates for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was delivered on September 5, 1968 (copy of certificate and return receipt are Attachment 6 hereto).

I mailed to the Judge of Probate of Montgomery County a certificate signed by NDPA County Chairman James W. Flowers, filing NDPA candidates for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was delivered on September 5, 1968 (copy of certificate [Alvin Holmes had withdrawn before the mailing and was stricken on the original] and return receipt are Attachment 7 hereto).

I mailed to the Judge of Probate of Morgan County a certificate signed by NDPA County Chairman

Garry H. Nungester, Jr., filing NDPA candidates for county office. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was received on September 5, 1968. I then received a letter from the Judge of Probate of Morgan County, T. C. Almon, questioning the certificate (a copy of the return receipt, his letter, and a copy of the certificate filed are Attachment 8 hereto).

I mailed to the Judge of Probate of St. Clair County a certificate signed by NDPA County Chairman J. H. Davis, filing NDPA candidates for county office. This was mailed Air Mail, Special Delivery, Certified Mail, on September 4, 1968, and a return receipt was received, indicating that it was delivered on September 5, 1968 (certificate and return receipt are Attachment 9 hereto).

I mailed to the Judge of Probate of Blount County a certificate signed by NDPA County Chairman J. Bains, filing the name of James Bains as a candidate for Congress in the 7th District. This was mailed Air Mail, Special Delivery, Certified Mail on September 4, 1968, and a return receipt was received, indicating that it was received on September 5, 1968 (certificate and return receipt are Attachment 10 hereto).

I mailed to the Judge of Probate of Greene County a certificate signed by NDPA County Chairman Peter J. Kirksey, filing candidates for county office and the name of William McKinley Branch for U.S. Congressman, 5th District. This was mailed on September 4, 1968, Air Mail, Special Delivery, Certified Mail, and a return receipt was received, indicating that it was delivered on September 5, 1968 (certificate and return receipt are Attachment 11 hereto).

[All certificates sent to Judges of Probate by me were notarized; some of the attached copies were made before the notarization.]

I mailed, Air Mail, Special Delivery on September 4, 1968, to NDPA County Chairmen listed below unsigned certificates received by me, recording, to the best of my knowledge, county meetings held on May 7, 1968, in their counties. Included was a memo from NDPA Chairman, Dr. John Cashin, a copy of which is Attachment 12 hereto. Listed below with the names of the County Chairmen are their county, the names of the candidates and the offices for which they were listed as nominated.

1. Mrs. Sallie Hadnott, Autauga County:

Miss Geraldine Hadnott, Board of Education, #1.

Mrs. Marzell Rawlinson, Board of Education, #2.

Dan Houser, Board of Revenue & Control, #1.

Mrs. Sallie Hadnott, Board of Revenue & Control #2.

Willie L. Wood, Board of Revenue & Control, #3.

Mrs. Susie W. Peagler, Board of Revenue & Control #4.

Willie J. Smith, County Superintendent of Education.

2. J. B. Newman, Henry County: James Malone, Board of Education.

3. William Harrison, Lee County: Albert Neasley, Justice of the Peace, Beat #2, Place 1.

4. Robert L. Strickland, Lowndes County:

Robert L. Strickland, Board of Revenue #1.

Jesse W. Farar, Board of Revenue #2.

Corey S. Whitney, Board of Revenue #3.

Jessie L. Johnson, Board of Revenue #4.

Sidney Logan, Jr., Board of Revenue #5.
Mrs. Rosa Lee Mallard, Board of Education #1.
William J. Cosby, Board of Education #2.
Mrs. Lillian S. McGill, Superintendent of Education.

5. Rev. E. N. Palmer, Dale County: John Henry Howard, County Commissioner #2.

6. Dr. Sullivan Jackson, Dallas County:
Dr. Sullivan Jackson, Board of Education #1.
Mrs. Marie P. Foster, Board of Education #2.

7. Sheriff Lucius Amerson, Macon County:
P. Campbell, County Commissioner #2.
Otis Pinkard, Board of Revenue #4.

8. Anne Braxton, Marengo County:
Mannel Coleman, Board of Revenue.
Fred Holmes, Board of Revenue.

9. Rev. F. N. Nixon, Sumter County:
Samuel Little, Chairman, Board of Education.
Robert Cork, Jr., Member, Board of Education.
Richard Rowe, Constable, Beat 1.
F. N. Nixon, Constable, Beat 6.
Obie Wilson, Constable, Beat 18.
Alice Belle, Constable, Beat 18.
Lewis Thomas, Constable, Beat 19.
Bettie Wimbley, Justice of the Peace, Beat 1.
John Hoad, Justice of the Peace, Beat 11.
Connie L. Ruffin, Justice of the Peace, Beat 18.
Annie B. Williams, Justice of the Peace, Beat 19.
Tessie Thomas, Justice of the Peace, Beat 19.

By telephone, I supplied to Attorney Orzell Billingsley the names of County Chairman, counties, candidates and offices for the counties below listed. He informed me that he notified these chairmen and

provided them with all the necessary information for filing candidates in their counties.

1. Peter J. Kirksey, Greene County:
   Vassie Knolt, County Commissioner No. 1.
   Harry C. Means, County Commissioner No. 2.
   Levi Morrow, Sr., County Commissioner No. 3.
   Frenchie Burton, County Commissioner No. 4.
   Robert Hines, Board of Education No. 1.
   James A. Posey, Board of Education No. 2.
2. Joseph Malisham, Tuscaloosa County:
   Maxie Thomas, Tax Assessor.
   Dr. Henry J. Savery, Board of Education No. 1.
   Marion E. Newson, Board of Education No. 2.
   Thomas Jefferson, Constable, Beat 16.
   Charles R. Crawford, Constable, Beat —.
   Roderick Dugliss, Board of Revenue No. 1.
   Joaquin C. Ruhn, Board of Revenue No. 2.
   Marc A. Frauenfelder, Board of Revenue No. 3.
   Milton C. Washington, Justice of the Peace No. 15.

I am informed and believe that the following has taken place: that, in Dale County, no certificate was filed; that in Dallas County the certificate would be filed on September 11, 1968; that, in Macon County, no certificate would be filed; that, in Marengo County, Anne Braxton, NDPA County Chairman, filed a correct slate of candidates on September 5, 1968, my list being erroneous; that, in Sumter County, the certificate was filed the evening of September 5, 1968, at the home of the Judge of Probate; that, in Greene County, Chairman Peter J. Kirksey did file on or about September 4, 1968, a certificate; that, in Pickens County, no certificate was filed; that, in Tuscaloosa County, a certificate was filed on September 4, 1968, by Joseph Malisham; and that, in Autauga County,

County Chairman Mrs. Sallie Hadnott, finding the Judge of Probate absent from his office on September 5, 1968, placed her certificate in the mail to him.

The candidates filed in Marengo County by Annie Braxton are, according to her, as follows:

T. R. Hayes, Justice of the Peace, Magnolia.
R. T. Hayes, Justice of the Peace, Magnolia.
Oscar Hildreth, Justice of the Peace, Wayne.
Arthur Woods, Justice of the Peace, Faunsdale.
Hillie Belcher, Justice of the Peace, Faunsdale.
James M. Harper, Justice of the Peace, Pineville.
William McKinley Branch, U.S. Congressman, District 5.

She said that the County Mass Meeting was held on May 7, 1968, at 12:15 p.m., at the County Courthouse.

Further deponent sayeth not.

/s/ F. J. ZYLMAN.

Sworn to and subscribed before me at Atlanta, Georgia this 11th day of September, 1968.

[SEAL] /s/ NANCY M. GUERRERO.
Notary Public, Georgia,
State at Large.

My Commission Expires April 21, 1972.

APPENDIX C

In the United States District Court for the Middle District of Alabama (Northern Division)

Civil Action No. 2757–N

SALLIE M. HADNOTT; REVEREND WILLIAM MCKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR. AND THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, A CORPORATION FOR THEMSELVES JOINTLY AND SEVERALLY, AND FOR ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

MABEL S. AMOS, AS SECRETARY OF STATE OF THE STATE OF ALABAMA; EDWARD A. GROUBY, AS JUDGE OF PROBATE FOR AUTAUGA COUNTY, ALABAMA; AND ALL OTHER JUDGES OF PROBATE OF THE STATE OF ALABAMA, JOINTLY AND SEVERALLY, WHO ARE SIMILARLY SITUATED; ALBERT BREWER, AS GOVERNOR OF THE STATE OF ALABAMA; MACDONALD GALLION, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND THEIR SUCCESSORS IN EACH OFFICE, DEFENDANTS

TEMPORARY RESTRAINING ORDER

A three-judge court has been convened in this case pursuant to 28 U.S.C.A. § 2281. The motion of plaintiffs for a temporary restraining order has been submitted on plaintiffs' said motion, the verified complaint and affidavits and exhibits attached thereto, and oral argument by counsel for plaintiffs and by Assistant Attorneys General of Alabama.

This case presents urgent and critical circumstances, involving issues of what persons are to be named on the ballot as candidates in the general election in Alabama on November 5, 1968. The court has, therefore, set the motion for preliminary injunction for hearing on September 30, 1968, a time as early as possible consistent with the necessities of preparation by the parties. The exigencies of printing ballots, mailing absentee ballots and other pre-election procedures, and of conduct of campaigns by candidates, in the short period of time before election day, November 5, present "difficult if not insurmountable practical problems"[1] should the plaintiffs be granted any substantial relief after the hearing set for September 30. The guide to a practicable solution to minimize the problems and protect the interests of all candidates and all voters insofar as it is possible to do so has been given by the Supreme Court of the United States in *Williams* v. *Rhodes, supra,* in an order entered September 10, 1968. A three-judge district court had refused to order the Secretary of State of the State of Ohio to put on the Ohio ballot the names of George C. Wallace, a candidate for President, and Marvin Griffin, a candidate for Vice President. Until it could hear and decide an appeal from that order the Supreme Court granted emergency interim relief to protect so far as practicable the rights of the candidates and the voters. Those who are before this court seeking places on the Alabama ballot, and the voters of Alabama who are entitled to consider voting for those candidates if they ultimately are granted places on the ballot, are entitled to like protection.

It is, therefore, ORDERED, ADJUDGED, and DECREED as follows:

---

[1] *Williams* v. *Rhodes*, Sup. Ct. of the United States, [Sept. 10, 1968].

1. The Honorable Mabel S. Amos, Secretary of State of the State of Alabama, shall prepare and issue to the Judges of Probate of all counties in Alabama a certification of the forms to be employed for official ballots to be used in the November, 1968 general election in Alabama. Such certification shall show that there is to be a column on the ballot for candidates of The National Democratic Party of Alabama.

2. The Secretary of State shall prepare and issue to the Judges of Probate of all counties in Alabama amended certifications covering the names of nominees and the offices for which nominated covering offices the candidates for which are required under Alabama law to be certified by the secretary of state to judges of probate. The amended certification shall show that the persons named on Schedule 1 hereto are nominees of The National Democratic Party of Alabama for the offices shown on Schedule 1 and are candidates for such offices under the name and emblem of said party.

3. With respect to the names of nominees and the offices for which nominated that are placed upon ballots by reasons other than certification by the Secretary of state, the names of the persons shown on Schedule 2 hereto as nominees of The National Democratic Party of Alabama shall be included by the Judges of Probate of the respective counties as candidates for the offices shown on Schedule 2 under the name and emblem of said party.

4. The Judge of Probate of each county using the voting machine process in whole or in part shall, to the extent applicable to the ballot in the particular county, include the aforesaid names as candidates in the printing of labels, programming of machines, and all other steps necessary to prepare such voting machines for the November, 1968, general election. The

Judges of Probate shall make such preparations that upon receipt of later instructions from the Secretary of State or from this court they can block out said names and be prepared to take such other steps as would be necessary to eliminate said names from the voting machine ballot should the judgment of this court provide for no, other, or different action from that specified herein.

5. On all official paper ballots and official absentee ballots which are prepared or printed pending the further orders of this court each Judge of Probate, to the extent applicable to the ballot in the particular county, shall include the above-described nominees of The National Democratic Party of Alabama as candidates under the name and emblem of said party. If official paper ballots or official absentee ballots already have been printed or prepared for use in any particular county on which the names of the above-described nominees do not appear as candidates they shall not be used, displayed or circulated pending the further orders of the court. All Judges of Probate shall take all such further action with respect to paper ballots, absentee ballots and absentee voting as may be necessary to insure that each county will be able to comply with any final judgment of this court relating to the claim of the nominees of The National Democratic Party of Alabama to places on the ballot as candidates in the November, 1968 general election.

6. The use of titles and nicknames of nominees is governed by the laws of the State of Alabama and not by the forms in which names appear on Schedules 1 and 2.

7. This order shall become effective upon the plaintiffs' furnishing a bond with acceptable sureties in the amount of $1000.00, for the payment of costs, and

will expire ten days from the date of its issuance, subject to extension by the court.

DONE this the 18th day of September, 1968.

/s/ JOHN C. GODBOLD,
United States Circuit Judge.

/s/ FRANK M. JOHNSON,
United States District Judge.

SCHEDULE 1

For United States Senator—Robert P. Schwenn
For President Public Service Commission—John Henry Davis
For Presidential Elector, Place No. 1—E. D. Bouier
For Presidential Elector, Place No. 2—Rev. William McKinley Branch
For Presidential Elector, Place No. 3—Mrs. Virginia Durr
For Presidential Elector, Place No. 4—R. E. Cordray
For Presidential Elector, Place No. 5—J. H. Davis
For Presidential Elector, Place No. 6—George De-Boer
For Presidential Elector, Place No. 7—Jack Drake
For Presidential Elector, Place No. 8—Billy Joe Robinson
For Presidential Elector, Place No. 9—Robert Schwenn
For Presidential Elector, Place No. 10—James Williams
For Representative in Congress from 1st Congressional District—Noble Beasley
For Representative in Congress from 2nd Congressional District—Rev. Richard Boone
For Representative in Congress from 3rd Congressional District—Wilbur Johnston
For Representative in Congress from 4th Congressional District—T. J. Clemons

For Representative in Congress from 5th Congressional District—Rev. William McKinley Branch
For Representative in Congress from 6th Congressional District—Thomas Wrenn
For Representative in Congress from 7th Congressional District—James Bains
For Representative in Congress from 8th Congressional District—Charlie Burgess
For Representative in the Alabama House of Representatives from Madison County District 3, Place No. 2—Myrna Copeland

SCHEDULE 2

Counties

Autauga:
Board of Education, Dist. 1, Miss Geraldine Hadnott
Board of Education, Dist. 2, Mrs. Marsell Rawlinson
Board of Revenue & Control, Dist. 1, Mrs. Sallie Hadnott

Colbert:
Superintendent of Education, Charles L. Carter
Board of Education, Place No. 2, Charles Burt
Board of Revenue, NE Dist., Rev. George Smith
Board of Revenue, NW Dist., Leon Fuqua

Cullman: Chairman, Board of Revenue, Frances Gammon

Dallas:
Board of Education, Place 1, Dr. Sullivan Jackson
Board of Education, Place 2, Mrs. Marie P. Fosr

Etowah:

Board of Education, Place 1, W. S. Alaxander
Board of Revenue, Dist. 1, Jimmy Horton
Board of Revenue, Dist. 3, Booker T. Borden
Constable, K. J. Sullivan
Justice of the Peace, Beat No. 1, Patricia McAlpin
Justice of the Peace, Beat No. 1, Floyd Donald
Justice of the Peace, Beat No. 10, Earl Jerone King
Justice of the Peace, Beat No. 10, Joe Hill
Justice of the Peace, Beat No. 16, Aris Morris
Justice of the Peace, Beat No. 17, Isaiah Hayes III
Justice of the Peace, Beat No. 17, Willie Cylar

Greene:

County Commissioner, Place No. 1, Vassie Knott
County Commissioner, Place No. 2, Harry C. Means
County Commissioner, Place No. 3, Levi Morrow, Sr.
County Commissioner, Place No. 4, Frenchie Burton
Board of Education, Place No. 1, Robert Hines
Board of Education, Place No. 2, James A. Posey

Jefferson:

Board of Education, H. D. Coke
Board of Education, Mrs. Margaret P. Little

Lauderdale:

Board of Education, John H. Mayberry
Justice of the Peace, Beat No. 10, James C. Clay

Limestone: Board of Education, Dist. No. 1, E. D. Bouier

Madison: Board of Education, Dist. No. 5, James Henry Hicks

Marengo:
Justice of the Peace, Magnolia, T. R. Hayes
Justice of the Peace, Magnolia, R. T. Hayes
Justice of the Peace, Wayne, Oscar Hildreth
Justice of the Peace, Faunsdale, Arthur Woods
Justice of the Peace, Faunsdale, Hillie Belcher
Justice of the Peace, Pineville, James M. Harper

Montgomery:
County Board of Education, Henry Spears
County Board of Education, Orrelieus Christburg

Morgan:
Constable, Beat No. 1, Alphonso Pettus
Justice of the Peace, Beat 1, Garry Nungester

St. Clair:
Commissioner, Dist. 4, Henry H. Threatt
Judge of Inferior Court, Southern Div., James Truss
Member of Board of Education, Dist. 4, Place 3. J. H. Davis

Sumter:
Chairman, Board of Education, Place 1, Samuel Little
Member Board of Education, Place 2, Robert Cook, Jr.
Constable, Beat No. 1, Richard Rowe
Constable, Beat No. 6, F. N. Nixon
Constable, Beat No. 8, Alice Belle
Constable, Beat No. 18, Obie Wilson
Constable, Beat No. 19, Lewis Thomas
Justice of the Peace, Beat No. 1, Bettie Wimbly
Justice of the Peace, Beat No. 11, John Hoard
Justice of the Peace, Beat No. 18, Connie Ruffin
Justice of the Peace, Beat No. 19, Tessie Thomas
Justice of the Peace, Beat No. 19, Annie B. Williams

Tuscaloosa:

Tax Assessor, Maxie Thomas

Board of Education, Dist. No. 1, Dr. Henry W. Savery

Board of Education, Dist. No. 2, Marion E. Newsom

Constable, Beat No. 16, Thomas Jefferson

Constable, Beat No. 13, Charles R. Crawford

Board of Revenue, Dist. No. 1, Roderick Dugliss

Board of Revenue, Dist. No. 2, Joaquin G. Kuhn

Board of Revenue, Dist. No. 3, Marc A. Frauenfelder

Justice of the Peace, Beat No. 13, Milton C. Washington

Wilcox: Board of Education, Dist. No. 2, Benjamin Thompson

APPENDIX D

In the United States District Court for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT; REVEREND WILLIAM MCKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR. AND THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, A CORPORATION FOR THEMSELVES JOINTLY AND SEVERALLY, AND FOR ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

MABEL S. AMOS, AS SECRETARY OF THE STATE OF ALABAMA; EDWARD A. GROUBY, AS JUDGE OF PROBATE FOR AUTAUGA COUNTY, ALABAMA; AND ALL OTHER JUDGES OF PROBATE OF THE STATE OF ALABAMA, JOINTLY AND SEVERALLY, WHO ARE SIMILARLY SITUATED; ALBERT BREWER, AS GOVERNOR OF THE STATE OF ALABAMA; MACDONALD GALLION, AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND THEIR SUCCESSORS IN EACH OFFICE, DEFENDANTS

ANSWER TO COMPLAINT

Comes now the defendants in the above styled cause, by and through their attorneys of record, and answer the complaint, as last amended, as follows:

1. This court is without jurisdiction to decide the points in issue in this case in that each and every question of fact and of law raised by the complaint are questions which should be reserved to the exclu-

sive jurisdiction of the courts of the State of Alabama.

2. This court is without jurisdiction to decide the questions of laws presented by this suit in that each such question is a question of state law exclusively and must be decided by the courts of the State of Alabama.

3. Plaintiffs have no standing in this suit in that there is no diversity of citizenship between the parties, there is no amount of money in controversy, and no substantial federal Constitutional questions are raised in said Complaint.

4. Defendants deny each and every allegation of the said Complaint, as last amended, and demand strict proof of each and every allegation as to each defendant separately and severally.

5. Plaintiffs have no standing in this Court in that they have failed to exhaust their available State remedies, in that the Courts of the State of Alabama have been at all times open and available to them and they have failed to follow the remedies available to them under the laws of the State of Alabama.

6. Nominees of the National Democratic Party of Alabama (hereinafter referred to as "NDPA") listed in Schedule 1. of the Complaint as last amended, and as adopted by and listed in the Temporary Restraining Order of this Court dated September 18, 1968 in this cause, also designated as Schedule 1., are each and every one disqualified from being placed upon the ballot in the general election of November 5, 1968 in Alabama, in that each said nominee of NDPA failed to file with the Secretary of State, within five days after being nominated at an alleged mass meeting or convention, a statement designating himself or showing the name of not less than one or more than five persons elected to receive, expend,

audit, and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate as required by Title 17, Section 274 and 275, Code of Alabama 1940, Recompiled 1958, and therefore should be found by this Court to be so disqualified.

7. The following named nominees of NDPA as listed on Schedule 1 of the Temporary Restraining Order of this Court, are disqualified from being placed upon the ballot in the general election of November 5, 1968 in Alabama, and should be ordered so stricken from the order of the Court and disqualified as nominees, in that each has failed to file with the Secretary of State a Declaration of Intention to become a candidate for the respective offices hereinafter listed, in violation of Act No. 243, Acts of Alabama 1967, Special Session (hereinafter referred to as the "Garrett Act"):

a. John Henry Davis—President, Public Service Commission.

b. E. D. Bouier—Presidential Elector, Place 1.

c. Rev. William McKinley Branch—Presidential Elector, Place 2.

d. Mrs. Virginia Durr—Presidential Elector, Place 3.

e. George DeBoer—Presidential Elector, Place 6.

f. Jack Drake—Presidential Elector, Place 7.

g. Billy Joe Robinson—Presidential Elector, Place 8.

h. Noble Beasley—Representative in Congress from 1st Congressional District.

i. Wilbur Johnston—Representative in Congress from 3rd Congressional District.

j. Thomas Wrenn—Representative in Congress from 6th Congressional District.

k. James Bains—Representative in Congress from 7th Congressional District.

l. Charlie Burgess—Representative in Congress from 8th Congressional District.

m. Myrna Copeland—Alabama House of Representatives from Madison County, District 3, Place No. 2.

8. Each of the nominees of the NDPA, listed immediately above in paragraph No. 7. of this Answer, a. through m. inclusive, are disqualified from being placed upon the ballot in the general election of November 5, 1968 in Alabama, and should be so ordered disqualified by further order of this Court, in that each and every said nominee has failed to file with the Secretary of State of Alabama, at any time, a statement designating a person or committee to handle campaign funds as required by Title 17, Sections 274 and 275, Code of Alabama, supra.

9. Each nominee of the NPDA listed below is disqualified as a candidate for the respective offices listed in Schedule 1. of the Temporary Restraining Order, and should be so ordered by this Court as being disqualified from being placed on the general election ballot in Alabama in 1968, for that pursuant to Title 17, Section 153(1), Code of Alabama 1940, Recompiled 1958, each of these particular candidates are required to become a candidate for a numbered place or from a geographically numbered district, and after having filed Declarations of Intention to become candidates for certain numbered places (as hereinafter further described) each said nominee was later certified by the NDPA to the Secretary of State and to this Court (by the amendment to the Complaint) as candidates or nominees for other and different offices, numbered places or from other and different districts than spe-

cified in their said Declarations of Intent earlier filed; to wit:

a. R. E. Cordray filed a Declaration under the Garrett Act to become a candidate for Presidential Elector, *Place 1.*, but was certified to the Secretary of State and to this Court as a candidate for Presidential Elector, *Place 4.*

b. J. H. Davis filed such Declaration for Presidential Elector, *Place 4.*, but was certified, as aforesaid, for *Place 5.*

c. Robert Schwenn filed such Declaration for Presidential Elector, *Place 5.*, but was certified, as aforesaid, for *Place 9.*

d. James Williams filed such Declaration for Presidential Elector, *Place 2.*, but was later certified, as aforesaid, for *Place 10.* He has now requested his name stricken from the ballot (see attached copy of letter).

10. Title 17, Section 148, Code of Alabama 1940, Recompiled 1958, provides in part that, "The name of each candidate shall appear but one time on said ballot, and under only one emblem.", and therefore the following named nominees of the NDPA, listed in the Temporary Restraining Order of this Court, are disqualified from being placed on the general election ballot in Alabama in 1968, and should be so disqualified by order of this Court, in that they are in violation of Section 148, supra, as hereinafter set forth:

a. John Henry Davis and J. H. Davis, residing in St. Clair County in the City of Ashville, are one and the same person and has been certified to this Court by Complainants as the NDPA nominee for (1) President, Alabama Public Service Commission, (2) Presidential Elector, Place 5., and (3) Member of the Board of Education, District 4, Place 3., St. Clair County. [See attached Exhibits A and B, affidavits of

Judge H. B. Hamilton, and of Joe W. Watkins; also see stipulation to same effect by counsel for complainants, appearing in deposition of Honorable Mabel Amos.]

b. Robert P. Schwenn has been certified to this Court as a nominee of the NDPA for United States Senator, and also for Presidential Elector, Place 9., in violation of Section 148, supra.

c. Rev. William McKinley Branch is certified to this Court as the NDPA nominee for Presidential Elector, Place 2., and also for United States House of Representatives from the 4th Congressional District, in violation of Section 148, supra.

d. E. D. Bouier is certified to this Court as the NDPA nominee for Presidential Elector, Place 1., and also for the Limestone County Board of Education, District No. 1, in violation of Section 148, supra.

11. Defendants object to the placing on the several county ballots in the general election of 1968, certain nominees of the NDPA listed in Schedule 2., of the amendment to the complaint and in Schedule 2., of the Temporary Restraining Order of this Court, as hereinafter identified and for the reasons hereinafter specified, and pray that the Court so order that such nominees are disqualified:

a. Autauga County

(1) Complainants certified to this Court and to the Probate Judge of Autauga County the name of Dan Houser as the NDPA nominee for Board of Revenue and Control from District 1. Other candidates who resided in District 1. were certified for Districts 2., 3., and 4., and therefore failed to meet the residency requirements of the Alabama law, which was pointed out to Complainants and this Court in Defendants' letter dated September 17, 1968. Complainants there-

after amended their complaint and certification by omitting the name of Dan Houser for District 1., and substituting therefor the name of Mrs. Sallie Hadnott. Such substitution, obviously not being a clerical error, is a flagrant violation of the Alabama election laws in attempting to certify a person as a candidate after the final date set by law for certification, and for that it affirmatively appears that Mrs. Sallie Hadnott was not nominated in any mass meeting or convention for the office of Board of Revenue and Control, District 1., and therefore cannot become a nominee by action of complainants' attorney substituting her name for that of another nominee 12 days after the final date for certification set by law.

(2) All nominees of the NDPA for offices in Autauga County are disqualified in that they have failed to file statements with the Judge of Probate as required by Title 17, Sections 274 and 275, Code of Alabama 1940. [See attached Exhibit C.]

(3) All nominees of the NDPA for offices in Autauga County are disqualified in that no mass meeting was held on the first Tuesday in May, 1968 for the purpose of making such nominations as required by Title 17, Sections 413 and 414, Code of Alabama 1940. [See attached Exhibit D.]

(4) All nominees of the NDPA for offices in Autauga County are disqualified in that the names of such candidates were not certified in writing and filed with the Judge of Probate of said county not less than 60 days prior to the date of the general election of November 5, 1968 as required by Title 17, Section 145, Code of Alabama 1940. [See attached Exhibit E.]

b. Colbert County

(1) Charles L. Carter is disqualified from having his name placed on the ballot for Superintendent of

Education of Colbert County in that he has failed to have furnished to the Judge of Probate within the time specified by Alabama law, a certificate as to his educational qualifications and experience as required by Title 52, Sections 103 and 104, Code of Alabama 1940.

(2) Rev. George Smith was certified to this Court as being certified to the Probate Judge of Colbert County as a candidate for Board of Revenue, S.E. Dist., but failed to meet the residency requirements of the Alabama law in that he resides in the N.E. Dist. Attorney for Complainants has attempted to substitute districts and certify the said George Smith as a candidate for an office for which he was not nominated.

(3) Leon Fuqua is disqualified as a candidate for Board of Revenue of Colbert County, N.W. Dist., for that he was certified as a nominee for the S.W. Dist., in which he did not reside, and has not been nominated for said office from the N.W. District.

(4) All nominees for office in Colbert County specified in Schedule 2., of the Temporary Restraining Order are disqualified from having their names placed on the ballot in the general election of November 5, 1968 for that each nominee has failed to file with the Probate Judge of Colbert County a Declaration of Intention required by the Garrett Act and also have failed to file statements required by Title 17, Sections 274 and 275, Code of Alabama 1940. [See attached Exhibit F.]

c. Cullman County

Frances Gammon is disqualified as the nominee of the NDPA for Chairman, Board of Revenue of Cullman County in that he failed to file with the Probate Judge of said county a Declaration of Intent pursuant to the Garrett Act, and also for that he failed

to file the statement required by Title 17, Sections 274 and 275, Code of Alabama 1940, as hereinbefore described. [See attached Exhibit G.]

d. Dallas County

NDPA nominees T. J. Clemons, Dr. Sullivan Jackson, and Mrs. Marie Foster are disqualified from having their names on the general election ballot in Dallas County, and T. J. Clemons is disqualified from having his name appear on any ballot in the Fourth Congressional District, in that, while each complied with the Garrett Act, none of the said nominees were certified to the Judge of Probate of said county as having been nominated until September 17, 1968, which is less than 60 days prior to the date of the election and, therefore each is in violation of Title 17, Section 145, Code of Alabama 1940. [See attached Exhibit H-(D).]

e. Etowah County

(1) All nominees of the NDPA for offices in Etowah County are disqualified in that each failed to file Declarations of Intent as required by the Garrett Act, and also for the fact that each has failed to file with the Probate Judge of said county a statement naming a person or committee to handle campaign funds as required by Title 17, Sections 274 and 275, supra. [See attached Exhibit I.]

(2) NDPA nominee Jimmy Horton is disqualified in that he is certified as a candidate for Etowah County Board of Revenue, District 1., in which he resides, however, there is no vacancy in that position and such position is not up for election on November 5, 1968. [See attached Exhibits I-(B) and I-(C).]

(3) NDPA nominees K. J. Sullivan, Floyd Donald, Joe Hill and Willie Cylar have submitted resigna-

tions to the Probate Judge of said county for the respective offices listed on Schedule 2., of the Temporary Restraining Order, therefore this Court should remove those names from any further order if such order is issued. [See attached Exhibit I–(B).]

f. Greene County

(1) All NDPA nominees listed in Schedule 2., of the Temporary Restraining Order as candidates for office in Greene County are disqualified in that: (a) no mass meeting was held by said NDPA in Greene County on the first Tuesday in May, 1968 as required by law, (b) each of the said nominees have failed to file statements with the Probate Judge of said county as required by Title 17, Sections 274 and 275, supra, (c) each nominee certified to the Judge of Probate and to this Court for an office in Greene County have failed to comply with the Garrett Act. [See attached Exhibits J, K, and L.]

(2) Rev. William McKinley Branch is disqualified from being placed on the general election ballot in Greene County and in each and every county in the 5th Congressional District, for that: (a) he failed to file a Declaration of Intent with the Probate Judge of Greene County, and as a candidate for a district office he is required by law to file such Declaration with the Probate Judge of each county in the district; (b) he has failed to file a statement with the said Judge of Probate as required by Title 17, Sections 274 and 275, supra. [See attached Exhibits, J. K, and L.]

g. Jefferson County

All NDPA nominees for office in Jefferson County or in the Sixth Congressional District are disqualified from having their names placed on the general election ballot in Alabama in 1968, in that, (1) no mass meeting was held for the purpose of nominations on

the first Tuesday in May, 1968 as required by law; (2) each candidate for a county office and for a district office failed to file with the Probate Judge of Jefferson County a Declaration of Intention required by the Garrett Act; (3) each said nominee failed to file a statement with the said Probate Judge required by Title 17, Sections 274 and 275, supra; (4) more specifically, Thomas Wrenn, failed to file the above mentioned statements and declarations with each judge of probate in the Sixth Congressional District, in that such district encompasses part of Jefferson County, and he failed to file such statements with the Probate Judge of said county and is therefore disqualified as a nominee for the United States House of Representatives from said district. [See attached Exhibits M, N, N-(A), N-(B).]

h. Lauderdale County

Each nominee of the NDPA for office in Lauderdale County is disqualified in that the law requires that such candidates run by place number, and said nominees failed to become certified by place number, and each said candidate or nominee is further disqualified for failure to file with the Judge of Probate of said county the statement relative to designating a person to handle campaign funds as required by Title 17, Sections 274 and 275, supra. [See attached Exhibit O.]

i. Limestone County

(1) NDPA nominee Charlie Burgess is disqualified from appearing on any ballot in the 8th Congressional District in that he has failed to file with the Judge of Probate of Limestone County, a county within the said Congressional District, a statement required under Title 17, Sections 274 and 275, Code of Alabama 1940, and for the further reason that he has

failed to file with said Probate Judge a Declaration of Intention required by the Garrett Act. [See attached Exhibits P, P-(A), P-(B).]

(2) NDPA nominee E. D. Bouier is further disqualified as a candidate for the office of Board of Education, District No. 1, in Limestone County, in that he filed a Declaration of Intent under the Garrett Act to become a candidate for *District No. 2,* and likewise filed the statement required by Title 17, Sections 274 and 275, for *District No. 2.* No nomination has been received by the Judge of Probate from the NDPA for Board of Education, *District No. 1.* [See attached Exhibits P, P-(A), P-(B).]

j. Montgomery County

Nominees of the NDPA, Henry Spears and Orrelieus Christburg are disqualified as candidates for Board of Revenue in that they failed to file qualifying papers with the Judge of Probate of Montgomery County for numbered places or districts as required by Act No. 222, Local Acts of Alabama, 1939, p. 125, and have not been certified to this Court for numbered places.

k. Morgan County

All nominees of the NDPA for offices in Morgan County are disqualified in that each failed to file a Declaration of Intention to become a candidate with the Judge of Probate of said county as required by the Garrett Act, and for the further reason that each said nominee has failed to file with said Probate Judge the statement concerning campaign finances as required by Title 17, Sections 274 and 275, supra. [See attached Exhibits Q and Q-(A).]

l. St. Clair County

(1) NDPA nominee J. H. Davis, also known as John Henry Davis, is disqualified in that he has filed

for three offices or places on the ballot under the same party emblem in violation of Title 17, Section 148, Code of Alabama 1940, as hereinbefore further described.

(2) All nominees of the NDPA for offices in St. Clair County are disqualified in that each has failed to file Declarations of Intention to become candidates with the said Probate Judge as required under the Garrett Act, and for the further reason that each has failed to file with the Judge of Probate the statement required by Title 17, Sections 274 and 275, supra. [See atfached Exhibits R and S.]

12. All NDPA nominees for county and district offices are disqualified in that each said nominee failed to file with each probate judge required by law, a statement appointing a person or committee to receive, expend, audit and dispense campaign funds, within five days from their nomination by any alleged county or district mass meeting, as required by Title 17, Sections 274 and 275, Code of Alabama 1940, Recompiled 1958. Defendants reserve such other and further grounds for disqualification of NDPA candidates as may appear from depositions or testimony taken in this cause.

The above premises considered, Defendants pray that this Court enter an order in favor of said Defendants: (1) dismissing the Complaint, (2) dissolving its Temporary Restraining Order, and further allowing Defendants to proceed to have ballots printed and distributed for the general election of November 5, 1968, in the State of Alabama with all nominees of the National Democratic Party of Alabama omitted therefrom, (3) that the Court refuse

jurisdiction of the said cause, and (4) that the costs of this case be taxed against the Complainants.

Respectfully submitted.

MACDONALD GALLION,
Attorney General of Alabama,
By: JOHN G. BOOKOUT,
Deputy Attorney General,
WILLIAM N. MCQUEEN,
Assistant Attorney General,
LESLIE HALL,
Assistant Attorney General,
GORDON MADISON,
Assistant Attorney General,
Attorneys for Defendants.

STATE OF ALABAMA,
Montgomery County:

Before me, a notary public in and for said state and county, personally appeared John G. Bookout, one of the attorneys for the defendants in the above cause, and upon first being duly sworn, deposes and says that he is informed and believes and upon such information and belief states that the matters presented in the foregoing Answer to Complaint are true to his best knowledge, information and belief.

JOHN G. BOOKOUT.

Sworn to and subscribed before me, this the 25th day of September, 1968:

MARTHA G. INGRAM,
Notary Public.

I, John G. Bookout, as an Attorney of Record for Defendants, do hereby certify that I have mailed, properly addressed and postage prepaid, a copy of the foregoing Answer to Complaint to attorneys of record for Complaintants, Charles Morgan, Jr., and Orzelle Billingsley, Jr. on this the 25th day of September, 1968.

JOHN G. BOOKOUT.

829-701—69——7

APPENDIX E

On the dates set forth below, the following persons filed declarations of candidacy for nominations for offices in the May 7, 1968 Democratic primary election in Greene County and certified themselves as the individuals appointed to handle their campaign funds as required by the Corrupt Practices Act.

Name of candidate	Office sought	Date received by Office of Probate Judge
Vassie Knott	County Commissioner, District No. 1	February 20, 1968
Harry C. Means	County Commissioner, District No. 2	February 16, 1968
Levi Morrow, Sr.	County Commissioner, District No. 3	February 21, 1968
Frenchie Burton	County Commissioner, District No. 4	February 21, 1968
Robert Hines	Board of Education, Place No. 1	February 20, 1968
J. A. Posey	Board of Education, Place No. 2	February 21, 1968
G. D. Seale	County Commissioner, District No. 1	February 9, 1968
J. E. Henderson	County Commissioner, District No. 2	February 9, 1968
Homer E. Carpenter	County Commissioner, District No. 3	February 12, 1968
W. Herman Drummond	County Commissioner, District No. 4	February 10, 1968
Hugh Gould	Board of Education, Place No. 1	February 13, 1968
Richard Owens	Board of Education, Place No. 2	February 21, 1968

Attached is a copy of one of the forms filed by the candidates. Certified copies of the form filed by each candidate has been lodged with the Clerk of this Court.

QUALIFICATION BLANK

(DECLARATION OF CANDIDACY)

STATE OF ALABAMA,
County of Greene.

I hereby declare myself to be a candidate for the Democratic nomination (or election) in the Primary Elections to be held on Tuesday, the 7th day of May, 1968, and on Tuesday, the 4th day of June,

1968, for the office of County Commissioner for Greene (District, Circuit or *County*, if applicable), #1 (Place Number, if applicable).

I hereby certify that I am a Democrat, that I am a qualified elector of the State of Alabama; that I subscribe to the principles of the Democratic Party of Alabama; and that I possess the qualifications fixed by law for the office for which I am a candidate.

If I am a candidate for the Democratic nomination for Judge of a Court of Record, I do further certify that at the time of filing this Declaration of Candidacy I am not under disbarment or suspension.

I hereby certify and declare that I appoint myself (and hereby accept the appointment) as the sole and only person or committee to receive, expend, audit and disburse all monies contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting my nomination or election as such candidate for said office in accordance with Sections 274 and 275 of Title 17 of the Code of Alabama of 1950, as amended (Corrupt Practices Act).

Vassie Knott
(Signature of Candidate)

Route 1, Box 106–V
(Address)

Boligee, 35443
(City) (Zone)

Sworn to and subscribed before me on this 20 day of February, 1968, F. L. Jackson, Sr.
(Notary Public)

Please type or print your name as you wish it to appear on the ballot Vassie Knott

For instructions, see reverse side

INSTRUCTIONS

On or before Saturday, February 24, 1968, candidates for all offices, except County offices, are required to file this announcement of candidacy with and pay the entrance or qualifying assessment to:

Robert S. Vance, Chairman
State Democratic Executive Committee of Alabama
938 Frank Nelson Building
Birmingham, Alabama 35203

On or before Saturday, February 24, 1968, candidates for County offices are required to file this announcement of candidacy with and pay the entrance or qualifying assessment to the Chairman of the County Committee.

Entrance or Qualifying Assessments

Assessments as to *all offices except County offices* are as follows:

(a) Against each candidate for nomination for any remunerative office other than a County office, and except as otherwise herein provided, 2% of the salary of such office for the first year of the new term from every lawful source, including supplements from the Counties, for Circuit Judges and District Attorneys, but not including expense allowances to Circuit Judges, District Attorneys, United States Senators and Congressmen; and except that in cases of candidates for any remunerative office for an unexpired term, other than a county office, the amount to be paid shall be one-half of the amount which would be paid if said candidate were running for a full term.

(b) Against each candidate for National Committeeman or National Committeewoman, $100.00.

(c) Against each candidate for Elector, $50.00.

(d) Against each candidate for Delegate or Alternate Delegate to the Democratic National Convention, $25.00. Assessments for *County Office* will be fixed by the respective County Democratic Executive Committees.

Alabama Corrupt Practices Act

Within five days after filing this announcement of candidacy, candidates for State offices must file qualifications under the Corrupt Practices Act with the Secretary of State at Montgomery, Alabama, and candidates for County offices must file with the Probate Judge of their County. Candidates for a District or Circuit office must file with the Probate Judge of each County in such District or Circuit and should also file with the Secretary of State at Montgomery. (See Sections 274 and 278 of Title 17, Alabama Code of 1940, as amended.) A copy of this announcement of candidacy filed with the Secretary of State and Probate Judge(s) will meet the requirements of Section 274 of Title 17, Alabama Code of 1940, as amended, where the candidate himself (rather than a committee) intends to receive, disburse and report on all monies used in promoting his nomination or election.

For details concerning the itemized sworn statement required within thirty (30) days after the election, see Sections 279 and 280, Title 17, Alabama Code of 1940, as amended (found in the 1965 Pocket Parts to the Recompiled 1958 Code).

APPENDIX F

The following candidates in the May 7, 1968 Democratic Primary in Greene County Alabama filed statements of their campaign contributions and expenses on the dates indicated in accordance with the Corrupt Practices Act.

Name of Candidate	Office Sought	Date Received by Office of Probate Judge
Vassie Knott	County Commissioner, District No. 1	May 21, 1968
Harry C. Means	County Commissioner, District No. 2	Do.
Levi Morrow, Sr	County Commissioner, District No. 3	Do.
Frenchie Burton	County Commissioner, District No. 4	Do.
Robert Hines	Board of Education, Place No. 1	Do.
J. A. Posey, Sr	Board of Education, Place No. 2	Do.
G. D. Seale	County Commissioner, District No. 1	May 16, 1968
J. E. Henderson	County Commissioner, District No. 2	May 21, 1968
Homer E. Carpenter	County Commissioner, District No. 3	May 20, 1968
W. Herman Drummond	County Commissioner, District No. 4	May 17, 1968
Hugh Gould	Board of Education, Place No. 1	May 16, 1968
Richard Owens	Board of Education, Place No. 2	May 21, 1968

Attached is a sample copy of one of the statement forms filed by the candidates. Copies of the forms actually submitted by each candidate are on file with the Clerk of this Court.

EXPENSE ACCOUNT OF CANDIDATE

(To Be Filed Within 15 Days After the Primary Election)

Name: Vassie Knott
Mailing Address: Route 1, Box 106–V

Pursuant to Title 17, Sections 278, 279 and 400 of the Code of Alabama as amended by Acts No. 411 and

405, Regular Session, 1959, defining the Corrupt Practices Act, I herewith submit a full, correct, detailed and itemized statement of all expenses made directly or indirectly in sums over $5.00 and of all obligations, debts, or liabilities assumed or incurred at the time of filing this statement, together with the names of all contributors of amounts in excess of $10.00, with the amounts given by each, and a list of all gifts, loans or contributions made in connection with my campaign as a candidate in the Primary Election held on May 7, 1968, for the office of County Commissioner Place No. 1

(Enter Name of Office)

Contributions	$95.40
Total	95.40
Expenses Incurred:	
Literature	$40.40
Transportation	55.00
Total	95.40

STATE OF ALABAMA
County of Greene.

I, Geneva L. Mattison a Notary Public in and for said county in said state, hereby certify that Vassie Knott whose name is signed to the foregoing statement, who is known to me, he personally appeared before me on this day and being first duly sworn deposes and says that the statement hereinabove made is in all respects truse, and that the same is a full and detailed statement of all monies, securities or equivalents for money coming under the control or custody of said committee and by it expended directly or indirectly.

VASSIE KNOTT.
(Signature of Candidate)

Sworn to and subscribed before me this May 21, 1968.

GENEVA L. MATTISON
(Notary Public)

Act No. 405 (Regular Session, 1959), S. 113—
Andrews

AN ACT To amend Section 400 of Title 17, Code of Alabama (1940), which requires candidates in primary elections to file statements of campaign expenditures

Be It Enacted by the Legislature of Alabama:

Section 1. Section 400 of Title 17, Code of Alabama (1940), is amended to read as follows:

"Section 400. Expense account of candidate must be made and filed.—Any candidate for any office elected by the votes of more than one county, except candidates for the office of state senate, shall file with the secretary of state, and every candidate for a county office and candidates for the state senate and house of representatives shall file with the judge of probate of the county or counties in which said election is held, a sworn statement, setting out and itemizing the expenses of his canvass in such election within fifteen days after such election, and any candidate who fails to so file and swear to such statement within said time, shall be guilty of a misdemeanor, and, on conviction, must be fined not less than one hundred nor more than one thousand dollars."

329-701 – 69 – – 8

APPENDIX G

The following candidates for office in the November 5, 1968 general election in Greene County, Alabama filed statements of their campaign contributions and expenses within thirty days after the general election in accordance with the Corrupt Practices Act.

Name of candidate	Office sought	Date received by Office of Probate Judge
Vassie Knott	County Commissioner, District No. 1	December 5, 1968
Harry C. Means	County Commissioner, District No. 2	December 4, 1968
Levi Morrow, Sr	County Commissioner, District No. 3	December 2, 1968
Frenghie Burton	County Commissioner, District No. 4	December 3, 1968
Robert Hines	Board of Education, Place No. 1	November 15, 1968
J. A. Posey, Sr	Board of Education, Place No. 2	November 18, 1968
G. D. Seale	County Commissioner, District No. 1	November 12, 1968
J. E. Henderson	County Commissioner, District No. 2	November 13, 1968
Homer E. Carpenter	County Commissioner, District No. 3	November 13, 1968
W. Herman Drummond	County Commissioner, District No. 4	November 15, 1968.
Hugh Gould	Board of Education, Place No. 1	November 13, 1968
Richard Owens	Board of Education, Place No. 2	November 14, 1968

Attached is a sample copy of the statement forms filed by the candidates. Copies of the forms actually submitted by each candidate are on file with this Court.

STATEMENT OF CAMPAIGN INCOME AND DISBURSEMENTS

This statement is filed on behalf of the candidacy of Vassie Knott for the office of County Commissioner, Greene Co. in the November 5, 1968 General Election.

All expenditures, including debts and liabilities incurred, made directly or indirectly, in excess of $5.00 are:

To whom paid	Nature of item	By whom service performed	Purpose of expense	Amount
Gas station	Gas and oil	Texaco Service	Travel	41.26
Gas station	Antifreeze	Texaco Service	Travel	4.00
(a) Total				45.26
(b) In addition, various expenditures, each in the amount of $5.00 or less, were made in the total amount of				
(c) Total expenditures and liabilities, (a) plus (b)				

The following persons contributed in excess of $10.00 each:

Name of contributor	Amount
Green Co. Civic Association	45.26
(d) Total	
(e) In addition, various contributions, each in the amount of $10.00 or less were received in the total amount of	
(f) Total contributions	45.26

AFFIDAVIT

STATE OF ALABAMA,
County of Greene.

I swear that the foregoing statement of Campaign Income and Disbursements is in all respects true and it is a full and detailed statement of all moneys, securities, or equivalents for money coming under the control or custody of the committee to receive, expend, audit and disburse money or funds contributed and by them expended directly or indirectly.

_____,

Treasurer of committee or, if candidate himself has been appointed as the committee, the candidate.

Subscribed and sworn before me this 27th day of Nov., 1968.

F. L. JACKSON,
Notary Public.

AFFIDAVIT OF CANDIDATE

(to be signed if above affidavit signed by person other than candidate)

STATE OF ALABAMA,
County of Greene.

I swear that the foregoing statement is, to the best of my knowledge and belief, in all respects true, and that I have not in person made any expenditures or received any contributions which are not set forth and covered by said statement.

VASSIE KNOTT,
Candidate.

Subscribed and sworn before me this 27th day of Nov., 1968.

F. L. JACKSON,
Notary Public.

APPENDIX H

In the District Court of the United States for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT, ET AL., PLAINTIFFS,

UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

vs.

MABEL S. AMOS, ET AL., DEFENDANTS

ORDER

In order that a determination can be made of the exact number of votes cast by placing an "X" under the emblem of the National Democratic Party of Alabama in the Greene County, Alabama General Election of November 5, 1968, and on motion of the United States, it is ORDERED and ADJUDGED that the defendants J. Dennis Herndon, Judge of Probate; William E. Lee, Sheriff; and Mary C. Yarbrough, Circuit Clerk, open the ballot boxes used on November 5, 1968, in the presence of an attorney representing the United States, and count the number of ballots cast by placing an "X" under the emblem of the National Democratic Party of Alabama. No ballot is to be counted if any other "X" appears on it beside the name of any candidate or under the emblem of any party other than the National Democratic Party of Alabama.

The time of opening the boxes and counting the ballots will be at a time prior to December 20, 1968, agreeable to the defendants Herndon, Lee and Yarbrough, and the attorney for the Department of Justice.

The defendants Herndon, Lee and Yarbrough will be prepared to present a tally of the straight votes cast under the NDPA emblem to this Court on December 20, 1968 at 9:30 a.m.

The Clerk is DIRECTED to place sufficient copies of this order in the hands of the United States Marshal in order that each of the defendants, Herndon, Lee, and Yarbrough may be served with a copy. The Clerk is also directed to deliver a copy by mail to defendants, G. B. Seale, J. E. Henderson, Homer E. Carpenter, Herman Drummond, Hugh Gould and Richard Owens.

DONE this the 17th day of December, 1968.

/s/ JOHN C. GODBOLD,
Circuit Judge.

/s/ FRANK M. JOHNSON, JR.,
District Judge.

APPENDIX I

In the District Court of the United States for the Middle District of Alabama, Northern Division

Civil Action No. 2757-N

SALLIE M. HADNOTT, ET AL., PLAINTIFFS,
UNITED STATES OF AMERICA, AMICUS CURIAE AND PARTY

vs.

MABEL S. AMOS, ET AL., DEFENDANTS

REPORT TO THE COURT

In an order dated December 17, 1968, this Court instructed the defendants, J. Dennis Herndon, Judge of Probate; William E. Lee, Sheriff of Greene County; and Mary C. Yarbrough, Circuit Clerk, to open the ballot boxes used in the Greene County General Elections, 1968, in the presence of an attorney representing the United States; and to count the number of ballots cast by placing an "X" under the emblem of the National Democratic Party of Alabama.

On December 20, 1968, pursuant to said order, the defendants Herndon, Lee and Yarbrough, and their agents did open said ballot boxes in the presence of John T. Nixon, an attorney representing the United States, and did count the ballots in accordance with the order of this Court. The results of this count are as follows:

Number of ballots marked with an "X" under the emblem of the NDPA, but no other marks under any other emblem or beside any any candidate's name	1,938
All other ballots	2,180
Total	4,118

DONE this the —— day of December, 1968.

HUBBARD AND WALDROP,

By ——— ———,

Attorneys for Defendants, James Dennis Herndon, Mary C. Yarbrough, and William E. Lee.

CERTIFICATION

I, John T. Nixon, an attorney of record in this case for the United States, do hereby certify that I was present at all times on December 20, 1968, during the counting of the ballots used in the November 5, 1968, Greene County General Elections, and that the results reported above are true and accurate to the best of my knowledge.

DATED this the 20th day of December, 1968.

JOHN T. NIXON,

Attorney, U.S. Department of Justice.

APPENDIX J

In the District Court of the United States, for the Middle District of Alabama, Northern Division

Civil Action No. 2757–N

SALLIE M. HADNOTT, ET AL., PLAINTIFFS

UNITED STATES OF AMERICA AMICUS CURIAE AND PARTY

vs.

MABEL S. AMOS, ET AL., DEFENDANTS

ORDER

The court having considered the Motion for order to show cause submitted by the United States and having further considered the Response and Answer of the Defendants, J. Dennis Herndon, Judge of Probate for Greene County, Alabama; William E. Lee, Sheriff of Greene County, Alabama; Mary C. Yarbrough, Circuit Clerk of Greene County, Alabama; G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens, and said Defendants having consented in said Response that the temporary relief therein prayed be granted to preserve the status quo pending a final determination of this cause, it appears to the court that said temporary relief should be granted and that the hearing of this cause upon the Motion for order to show cause and for temporary relief is unnecessary and should be abandoned.

It is therefore considered ORDERED, ADJUDGED and DECREED by the court that the Defendants J. Dennis

Herndon, Judge of Probate for Greene County, Alabama; William E. Lee, Sheriff of Greene County, Alabama; Mary C. Yarbrough, Circuit Clerk of Greene County, Alabama; G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould and Richard Owens be and they are hereby enjoined and restrained, pending further order of this court, from acting upon or in any other way effectuating their election in the November 5, 1968, General Election in Greene County, as certified by the Defendants, Herndon, Yarbrough and Lee.

It is further ordered that the Defendant Mabel S. Amos, as Secretary of State of the state of Alabama be enjoined and restrained, pending further order of this court, from issuing a commission to G. D. Seale, J. E. Henderson, Homer E. Carpenter and W. Herman Drummond as commissioners of Greene County, Alabama.

It is further ordered that G. D. Seale, J. E. Henderson, Homer E. Carpenter, and W. Herman Drummond be and they are hereby enjoined and restrained, pending further order of this court, from taking the oath of office as commissioners of Greene County, Alabama, and from assuming and/or taking office as commissioners of Greene County, Alabama for the term for which they were purportedly elected in said General Election of November 5, 1968.

It is further ordered that the Defendants Hugh Gould and Richard Owens be, and they are hereby, enjoined and restrained, pending further order of this court, from taking the oath of office as members of the Board of Education of Greene County, Alabama and from assuming or taking office as members of such Board of Education for the term to which they were purportedly elected in the General Election of November 5, 1968.

It is further ordered that the Defendants William E. Lee and James Dennis Herndon be, and they are hereby ordered and directed to preserve, pending further order of this court all ballots cast in the Greene County General Election of November 5, 1968, and all tally sheets, certificates of results and other election stationery used in said election.

It is further ordered that the Defendants William E. Lee, and James Dennis Herndon, Mary C. Yarbrough, G. D. Seale, J. E. Henderson, Homer E. Carpenter, W. Herman Drummond, Hugh Gould, and Richard Owens be, and they are hereby ordered and directed to preserve pending further orders of this court, any letters, communications, or records of communication pertaining or relating to said General Election of November 5, 1968, or to this case.

DONE AND ORDERED this 20th day of December, 1968.

/s/ JOHN C. GODBOLD,
United States Circuit Judge.

/s/ FRANK M. JOHNSON, JR.,
United States District Judge.

/s/ VIRGIL PITTMAN,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1969

APPENDIX K

Official Ballot, General Election, November 5, 1968

GREENE COUNTY

Names Of Offices To Be Voted For	ALABAMA INDEPENDENT DEMOCRATIC PARTY	AMERICAN INDEPENDENT PARTY OF ALABAMA	DEMOCRATIC PARTY	PROHIBITION PARTY	REPUBLICAN PARTY	THE ALABAMA CONSERVATIVE PARTY	THE NATIONAL DEMOCRATIC PARTY OF ALABAMA	INDEPENDENT	INDEPE
For United States Senator—Vote for One	( )	( )	( ) Jim Allen	( )	( ) Perry Hooper	( )	( ) Robert P. Schwenn	( )	( )
For Associate Justice Supreme Court, Place No. 1—Vote for One	( )	( )	( ) James S. Coleman	( )	( )	( )	( )	( )	( )
For Associate Justice Supreme Court, Place No. 2—Vote for One	( )	( )	( ) Robert B. Harwood	( )	( )	( )	( )	( )	( )
For Associate Justice Supreme Court—Unexpired Term—Vote for One	( )	( )	( ) James N. Bloodworth	( )	( )	( )	( )	( )	( )
For Presidential Public Service Commission—Vote for One	( )	( )	( ) Eugene (Bull) Connor	( )	( ) Fred R. Jones	( )	( ) John Henry Davis	( )	( )
For Presidential Elector, Place No. 1—Vote for One	( ) Ben F. Ray	( )	( ) Earl Morgan	( ) Mrs. Phoebe Cary Shoemaker	( ) M. J. Lyons, Jr.	( )	( ) E. D. Bouler	( )	( )
For Presidential Elector, Place No. 2—Vote for One	( ) Charles A. Bentley, Jr.	( ) Aaron C. Edwards	( ) Mabel S. Amos	( ) Mrs. J. E. Dillard	( ) James C. Van Antwerp, Jr.	( )	( ) William McKinley Branch	( )	( )
For Presidential Elector, Place No. 3—Vote for One	( ) Lafayette Patterson	( )	( ) MacDonald Gallion	( ) Mrs. Bertha Wallis Lee	( ) Paul Lowery	( )	( ) Mrs. Virginia Durr	( )	( )
For Presidential Elector, Place No. 4—Vote for One	( ) Roy D. McCord	( ) Ronald L. Pankey	( ) Mrs. Armistead Selden	( ) Mrs. Daisy Williams	( ) William H. Graham	( )	( ) R. E. Cordray	( )	( )
For Presidential Elector, Place No. 5—Vote for One	( ) Dot Little	( )	( ) Mrs. Jim Allen	( ) D. N. Stephenson	( ) Hult Sullivan	( )	( ) J. H. Davis	( )	( )
For Presidential Elector, Place No. 6—Vote for One	( ) Coleman A. Lollar, Jr.	( ) Bernice H. Morrison	( ) Richard (Dick) Beard	( ) Jerome B. Couch	( ) Robert D. Wilkinson, Jr.	( )	( ) George DeBoer	( )	( )
For Presidential Elector, Place No. 7—Vote for One	( ) Isom Clemon	( )	( ) Frank Mizell	( ) Ogburn A. Gardner	( ) Lee Clyde Traylor	( )	( ) Jack Drake	( )	( )
For Presidential Elector, Place No. 8—Vote for One	( ) James McArthur Reed	( )	( ) Albert Brewer	( ) Mrs. Lois Goodwin	( ) J. Smith Lanier, II	( )	( ) Billy Joe Robinson	( )	( )
For Presidential Elector, Place No. 9—Vote for One	( ) J. E. Brantley	( ) Steve E. Nation	( ) Mrs. Agnes Baggett	( ) Fred M. Burns	( ) Robert H. Maxwell	( )	( ) Robert Schwenn	( )	( )
For Presidential Elector, Place No. 10—Vote for One	( ) Joe L. Reed	( )	( ) Ernest Stone	( ) Mrs. Beulah K. Gray	( ) George Howard Young	( )	( ) James Williams	( )	( )
For Representative in Congress from 5th Congressional District—Vote for One	( )	( )	( ) Walter Flowers	( )	( ) Frank W. Donaldson	( ) W. C. (Chad) Gibbs	( ) William McKinley Branch	rd Eugene ney	( ) Mike
For County Commissioner, District No. 1—Vote for One	( )	( )	( ) G. D. Seale	( )	( )	( )	( )	( )	( )
For County Commissioner, District No. 2—Vote for One	( )	( )	( ) J. E. Henderson	( )	( )	( )	( )	( )	( )
For County Commissioner, District No. 3—Vote for One	( )	( )	( ) Homer E. Carpenter	( )	( )	( )	( )	( )	( )
For County Commissioner, District No. 4—Vote for One	( )	( )	( ) W. Herman Drummond	( )	( )	( )	( )	( )	( )
For Greene County Board of Education, Place No. 1—Vote for One	( )	( )	( ) Hugh Gould	( )	( )	( )	( )	( )	( )
For Greene County Board of Education, Place No. 2—Vote for One	( )	( )	( ) Richard Owens	( )	( )	( )	( )	( )	( )
For Tax Assessor—Vote for One	( )	( )	( ) M. A. (Aduston) Cook	( )	( )	( )	( )	( )	( )

APPENDIX K

Official Ballot, General Election, November 5, 1968

	ALABAMA INDEPENDENT DEMOCRATIC PARTY	AMERICAN INDEPENDENT PARTY OF ALABAMA	DEMOCRATIC PARTY	PROHIBITION PARTY	REPUBLICAN PARTY	THE ALABAMA CONSERVATIVE PARTY	THE NATIONAL DEMOCRATIC PARTY OF ALABAMA	INDEPENDENT	INDEPENDENT	FOR WRITE-IN
For One	( )	( )	( ) Jim Allen	( )	( ) Perry Hooper	( )	( ) Robert P. Schwenn	( )	( )	( )
	( )	( )	( ) James S. Coleman	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Robert B. Harwood	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) James N. Bloodworth	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Eugene (Bull) Connor	( )	( ) Fred R. Jones	( )	( ) John Henry Davis	( )	( )	( )
	( ) Ben F. Ray	( )	( ) Earl Morgan	( ) Mrs. Phoebe Cary Shoemaker	( ) M. J. Lyons, Jr.	( )	( ) E. D. Bouler	( )	( )	( )
	( ) Charles A. Bentley, Jr.	( ) Aaron C. Edwards	( ) Mabel S. Amos	( ) Mrs. J. E. Dillard	( ) James C. Van Antwerp, Jr.	( )	( ) William McKinley Branch	( )	( )	( )
	( ) Lafayette Patterson	( )	( ) MacDonald Gallion	( ) Mrs. Bertha Wallis Lee	( ) Paul Lowery	( )	( ) Mrs. Virginia Durr	( )	( )	( )
	( ) Ray D. McCord	( ) Ronald L. Pankey	( ) Mrs. Armistead Selden	( ) Mrs. Daisy Williams	( ) William H. Graham	( )	( ) R. E. Cardray	( )	( )	( )
	( ) Dot Little	( )	( ) Mrs. Jim Allen	( ) D. N. Stephenson	( ) Hult Sullivan	( )	( ) J. H. Davis	( )	( )	( )
	( ) Coleman A. Leller, Jr.	( ) Bernice H. Morrison	( ) Richard (Dick) Beard	( ) Jerome B. Couch	( ) Robert D. Wilkinson, Jr.	( )	( ) George DeBoer	( )	( )	( )
	( ) Isom Clemon	( )	( ) Frank Mizell	( ) Ogburn A. Gardner	( ) Lee Clyde Traylor	( )	( ) Jack Drake	( )	( )	( )
	( ) James McArthur Reed	( )	( ) Albert Brewer	( ) Mrs. Lois Goodwin	( ) J. Smith Lanier, II	( )	( ) Billy Joe Robinson	( )	( )	( )
	( ) J. E. Brantley	( ) Steve E. Nation	( ) Mrs. Agnes Baggett	( ) Fred M. Burns	( ) Robert H. Maxwell	( )	( ) Robert Schwenn	( )	( )	( )
	( ) Joe L. Reed	( )	( ) Ernest Stone	( ) Mrs. Beulah K. Gray	( ) George Howard Young	( )	( ) James Williams	( )	( )	( )
8th	( )	( )	( ) Walter Flowers	( )	( ) Frank W. Donaldson	( ) W. C. (Chad) Gibbs	( ) William McKinley Branch	( ) Richard Eugene Delaney	( ) Mike Simpson	( )
No. 1	( )	( )	( ) G. D. Seale	( )	( )	( )	( )	( )	( )	( )
No. 3	( )	( )	( ) J. E. Henderson	( )	( )	( )	( )	( )	( )	( )
No. 5	( )	( )	( ) Homer E. Carpenter	( )	( )	( )	( )	( )	( )	( )
No. 6	( )	( )	( ) W. Herman Drummond	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Hugh Gould	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Richard Owens	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) M. A. (Aduston) Cook	( )	( )	( )	( )	( )	( )	( )

Official Absentee Ballot, General Election, November 5, 1968

GREENE COUNTY

Names Of Offices To Be Voted For	ALABAMA INDEPENDENT DEMOCRATIC PARTY	AMERICAN INDEPENDENT PARTY OF ALABAMA	DEMOCRATIC PARTY	PROHIBITION PARTY	REPUBLICAN PARTY	THE ALABAMA CONSERVATIVE PARTY	THE NATIONAL DEMOCRATIC PARTY OF ALABAMA	INDEPENDENT
For United States Senator—Vote for One	( )	( )	( ) Jim Allen	( )	( ) Perry O. Hooper	( )	( ) Robert P. Schwenn	( )
For Associate Justice Supreme Court, Place No. 1—Vote for One	( )	( )	( ) James B. Coleman	( )	( )	( )	( )	( )
For Associate Justice Supreme Court, Place No. 6—Vote for One	( )	( )	( ) Robert B. Harwood	( )	( )	( )	( )	( )
For Associate Justice Supreme Court—Unexpired Term—Vote for One	( )	( )	( ) James N. Bloodworth	( )	( )	( )	( )	( )
For President Public Service Commission—Vote for One	( )	( )	( ) Eugene (Bull) Connor	( )	( ) Fred R. Jones	( )	( ) John Henry Davis	( )
For Presidential Elector, Place No. 1—Vote for One	( ) Ben F. Ray	( )	( ) Earl Morgan	( ) Mrs. Phoebe Cary Shoemaker	( ) M. J. Lyons, Jr.	( )	( ) E. D. Boulet	( )
For Presidential Elector, Place No. 2—Vote for One	( ) Charles A. Bentley, Jr.	( ) Aaron C. Edwards	( ) Mabel S. Amos	( ) Mrs. J. K. Dillard	( ) James C. Van Antwerp, Jr.	( )	( ) William McKinley Branch	( )
For Presidential Elector, Place No. 3—Vote for One	( ) Lafayette Patterson	( )	( ) MacDonald Gallion	( ) Mrs. Bertha Wallis Lee	( ) Paul Lowery	( )	( ) Mrs. Virginia Durr	( )
For Presidential Elector, Place No. 4—Vote for One	( ) Ray D. McCord	( ) Ronald L. Pinkley	( ) Mrs. Armistead Selden	( ) Mrs. Daisy Williams	( ) William H. Graham	( )	( ) R. E. Cordray	( )
For Presidential Elector, Place No. 5—Vote for One	( ) Dot Little	( )	( ) Mrs. Jim Allen	( ) D. N. Stephenson	( ) Hull Sullivan	( )	( ) J. H. Davis	( )
For Presidential Elector, Place No. 6—Vote for One	( ) Coleman A. Lollar, Jr.	( ) Bernice H. Morrison	( ) Richard (Dick) Beard	( ) Jerome B. Couch	( ) Robert D. Wilkinson, Jr.	( )	( ) George DeBoer	( )
For Presidential Elector, Place No. 7—Vote for One	( ) Isom Clemon	( )	( ) Frank Misell	( ) Ogburn A. Gardner	( ) Lee Clyde Traylor	( )	( ) Jack Drake	( )
For Presidential Elector, Place No. 8—Vote for One	( ) James MacArthur Reed	( )	( ) Albert Brewer	( ) Mrs. Lois Goodwin	( ) J. Smith Lanier, II	( )	( ) Billy Joe Robinson	( )
For Presidential Elector, Place No. 9—Vote for One	( ) J. E. Brantley	( ) Steve E. Nation	( ) Mrs. Agnes Baggett	( ) Fred M. Burns	( ) Robert H. Maxwell	( )	( ) Robert Schwenn	( )
For Presidential Elector, Place No. 10—Vote for One	( ) Joe L. Reed	( )	( ) Ernest Stone	( ) Mrs. Beulah K. Gray	( ) George Howard Young	( )	( ) James Williams	( )
For Representative in Congress from 6th Congressional District—Vote for One	( )	( )	( ) Walter Flowers	( )	( ) Frank W. Donaldson	( ) W. C. (Chad) Gibbs	( ) William McKinley Branch	( ) Richard Eugene Delaney
For County Commissioner, District No. 1—Vote for One	( )	( )	( ) G. D. Seale	( )	( )	( )	( ) Vassie Knott	( )
For County Commissioner, District No. 2—Vote for One	( )	( )	( ) J. E. Henderson	( )	( )	( )	( ) Harry C. Means	( )
For County Commissioner, District No. 3—Vote for One	( )	( )	( ) Homer E. Carpenter	( )	( )	( )	( ) Levi Morrow, Sr.	( )
For County Commissioner, District No. 4—Vote for One	( )	( )	( ) W. Herman Drummond	( )	( )	( )	( ) Frenchie Burton	( )
For Greene County Board of Education, Place No. 1—Vote for One	( )	( )	( ) Hugh Gould	( )	( )	( )	( ) Robert Hines	( )
For Greene County Board of Education, Place No. 5—Vote for One	( )	( )	( ) Richard Owens	( )	( )	( )	( ) J. A. Posey, Sr.	( )
For Tax Assessor—Vote for One	( )	( )	( ) M. A. (Aduston) Cook	( )	( )	( )	( )	( )
For Justice of the Peace, Precinct No. 1—Vote for One	( )	( )	( ) James E. Tuck	( )	( )	( )	( )	( )

AFFIDAVIT FOR ABSENTEE VOTER

STATE OF ALABAMA
GREENE COUNTY

Before me, the undersigned authority, personally appeared _____ who is (made) known to me and who, being first duly sworn, deposes and says: I am a bona fide and qualified elector of Precinct _____ and Box No. _____ in Greene County, State of Alabama. I have not voted in the election to be held on November 5, 1968, and I am entitled to vote therein. My regular business or occupation requires my absence from the county of my residence, and I will be absent from the county on the day of the election, or my regular business or occupation has so required me during the period of time required by law for me to vote in person at the polling place in my precinct.

_____
(Signature of Voter)

Sworn to and subscribed before me this _____ day of _____, 1968.

_____
(Official Capacity)

FOR ABSENT VOTER WHO IS THE WIFE OF A MEMBER OF THE ARMED FORCES

I hereby certify that the person whose signature appears above is the wife of a member of the Armed Forces and is residing with such member of the Armed Forces.

_____
Commanding Officer or Authority in Charge of the Husband of Above Named Person

FOR ABSENT VOTER WHO IS A VETERAN CONFINED TO A HOSPITAL OPERATED BY THE VETERANS' ADMINISTRATION

I hereby certify that the person whose signature appears above is confined to a hospital operated by the Veterans' Administration.

_____
Official Capacity

FOR PHYSICALLY INCAPACITATED PERSONS TO VOTE ABSENTEE BALLOT

Before me the undersigned authority, personally appeared _____ who is (made known) known to me and who, being first duly sworn, deposes and says: I am a bona fide resident and qualified elector of Beat or Precinct No. _____ and Box No. _____ in Greene County, State of Alabama and have not voted in the election to be held on the 5th day of November, 1968, and

(Signature of Voter)

I hereby certify that the person whose signature appears above is physically incapacitated and unable to go to the polling place in his precinct to vote.

_____
(Official Capacity)

FOR ELECTOR ATTENDING UNIVERSITY OR SPOUSE OF SUCH ELECTOR

I am a bona fide resident and qualified elector of Precinct No. _____ and Box No. _____ in Greene County, State of Alabama. I will be absent from the county of my residence on account of my attendance at college and I am the spouse of such elector at which I am duly enrolled outside the county.

(Signature of Voter)

I hereby certify that the person whose signature appears above is the spouse of a student attending college.

_____
(Official Capacity)

Official Absentee Ballot, General Election, November 5, 1968

Of To For	ALABAMA INDEPENDENT DEMOCRATIC PARTY	AMERICAN INDEPENDENT PARTY OF ALABAMA	DEMOCRATIC PARTY	PROHIBITION PARTY	REPUBLICAN PARTY	THE ALABAMA CONSTITUTIONAL PARTY	THE NATIONAL DEMOCRATIC PARTY OF ALABAMA	INDEPENDENT	INDEPENDENT	FOR WRITE-IN
—Vote for One	( )	( )	( ) Jim Allen	( )	( ) Perry O. Hooper	( )	( ) Robert P. Schwenn	( )	( )	( )
	( )	( )	( ) James B. Coleman	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Robert B. Norwood	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) James M. Bloodworth	( )	( )	( )	( )	( )	( )	( )
	( )	( )	( ) Eugene (Bull) Connor	( )	( ) Fred R. Jones	( )	( ) John Henry Davis	( )	( )	( )
No. 1—	( ) Ben F. Bay	( )	( ) Earl Morgan	( ) Mrs. Phoebe Cary Shoemaker	( ) M. J. Lyle, Jr.	( )	( ) E. D. Bouier	( )	( )	( )
No. 2—	( ) Charles A. Bentley, Jr.	( ) Aaron C. Edwards	( ) Mabel B. Amos	( ) Mrs. J. E. Dillard	( ) James C. Van Antwerp, Jr.	( )	( ) William McKinley Branch	( )	( )	( )
No. 3—	( ) Lafayette Patterson	( )	( ) MacDonald Gallion	( ) Mrs. Bertha Wallis Lee	( ) Paul Lowery	( )	( ) Mrs. Virginia Durr	( )	( )	( )
No. 4—	( ) Ray D. McCord	( ) Millard L. Pusley	( ) Mrs. Armistead Selden	( ) Mrs. Daisy Williams	( ) William H. Graham	( )	( ) R. E. Cordray	( )	( )	( )
No. 5—	( ) Dot Little	( )	( ) Mrs. Jim Allen	( ) D. N. Stephenson	( ) Hull Sullivan	( )	( ) J. H. Davis	( )	( )	( )
No. 6—	( ) Coleman A. Lollar, Jr.	( ) Royston H. Harrison	( ) Richard (Dick) Beard	( ) Jerome B. Couch	( ) Robert D. Wilkinson, Jr.	( )	( ) George DeLoor	( )	( )	( )
No. 7—	( ) Isom Clausen	( )	( ) Frank Minoli	( ) Ogburn A. Gardner	( ) Lee Clyde Traylor	( )	( ) Jack Drake	( )	( )	( )
No. 8—	( ) James McArthur Reed	( )	( ) Albert Brewer	( ) Mrs. Lois Goodwin	( ) J. Smith Lanier, II	( )	( ) Billy Joe Robinson	( )	( )	( )
No. 9—	( ) J. E. Brantley	( ) Steve E. Nation	( ) Mrs. Agnes Baggett	( ) Fred M. Burns	( ) Robert H. Maxwell	( )	( ) Robert Schwenn	( )	( )	( )
No. 10—	( ) Joe L. Reed	( )	( ) Ernest Stone	( ) Mrs. Beulah K. Gray	( ) George Howard Young	( )	( ) James Williams	( )	( )	( )
from 9th Cir. Ct.	( )	( )	( ) Walter Flowers	( )	( ) Frank W. Donaldson	( ) W. C. (Chad) Gibbs	( ) William McKinley Branch	( ) Richard Eugene Delaney	( ) Mike Simpson	( )
No. 1—	( )	( )	( ) G. D. Seale	( )	( )	( )	( ) Vassie Knott	( )	( )	( )
No. 2—	( )	( )	( ) J. E. Henderson	( )	( )	( )	( ) Harry C. Means	( )	( )	( )
No. 3—	( )	( )	( ) Homer E. Carpenter	( )	( )	( )	( ) Levi Morrow, Sr.	( )	( )	( )
No. 4—	( )	( )	( ) W. Hermon Drummond	( )	( )	( )	( ) Frenchie Burton	( )	( )	( )
of Education,	( )	( )	( ) Hugh Gould	( )	( )	( )	( ) Robert Hines	( )	( )	( )
of Education,	( )	( )	( ) Richard Owens	( )	( )	( )	( ) J. A. Posey, Sr.	( )	( )	( )
One	( )	( )	( ) M. A. (Adduston) Cook	( )	( )	( )	( )	( )	( )	( )
Precinct No. 1—	( )	( )	( ) James E. Tuck	( )	( )	( )	( )	( )	( )	( )

AFFIDAVIT FOR ABSENTEE VOTER

STATE OF ALABAMA
GREENE COUNTY

Before me, the undersigned authority, personally appeared _____ who is (made) known to me and who, being first duly sworn, deposes and says: I am a bona fide resident and qualified elector of Beat or Precinct No. _____ and Box No. _____ in Greene County, State of Alabama. I have not voted in the election to be held on November 5, 1968, and I am entitled to vote therein. My inability to appear personally before the election there the county of my residence, and I will be absent from the county on the day of the said election because of my employment or business as _____

FOR ABSENT VOTER WHO IS THE WIFE OF A MEMBER OF THE ARMED FORCES

I hereby certify that the person whose signature appears above is the wife of a member of the Armed Forces and is residing with such member of the Armed Forces.

_____
Commanding Officer or Authorized Officer in Charge of the Husband of Above Named Person

FOR ABSENT VOTER WHO IS A VETERAN CONFINED TO A HOSPITAL OPERATED BY THE VETERANS' ADMINISTRATION

FOR PHYSICALLY INCAPACITATED PERSONS TO VOTE ABSENTEE BALLOT

Before me, the undersigned authority, personally appeared _____ who is (made known) to me and who, being first duly sworn, deposes and says: I am a bona fide resident and qualified elector of Beat or Precinct No. _____ and Box No. _____ in Greene County, State of Alabama and have not voted in the election to be held on the 5th day of November, 1968, and

FOR ELECTOR ATTENDING UNIVERSITY OR COLLEGE OR SPOUSE OF SUCH ELECTOR

I am a bona fide resident and qualified elector of Beat or Precinct No. _____ and Box No. _____ in Greene County, State of Alabama. I will be absent from the county of my residence because of my attendance at a university or college and I am the spouse actually residing with such elector at which I am duly enrolled outside the county on the day of election.

_____
(Signature of Voter)

I hereby certify that the person whose signature appears above is duly enrolled at the university or college